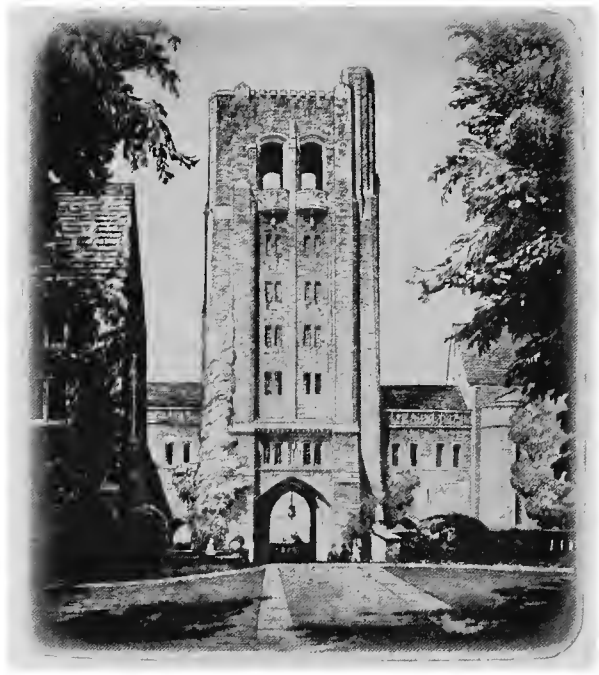




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A DIGEST OF CASES
RELATING TO
CRIMINAL LAW

From 1756 to 1883 inclusive.

BY
JOHN MEWS,
ASSISTED BY
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AND
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BARRISTERS-AT-LAW.

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1. AS TO STATE OF MIND.

What Necessary to make Act criminal.—The belief, though erroneous, of a prisoner in the existence of a right to do the act complained of excludes criminality. *Reg. v. Twose*, 14 Cox, C. C. 327.

The defendant was convicted under 8 & 9 Vict. c. 100, s. 44, of receiving two or more lunatics into her house, not being a registered asylum or hospital, or a house duly licensed under the above act or under any previous act, but it was specially found by the jury who convicted, that though the persons so received were lunatic, the defendant honestly, and on reasonable grounds, believed they were not lunatic:—Held, that such belief was immaterial and that the conviction was right. *Reg. v. Bishop*, 5 Q. B. D. 259; 14 Cox, C. C. 404; 49 L. J., M. C. 45; 42 L. T. 240; 28 W. R. 475; 44 J. P. 330.

In a colliery certain horses were worked while suffering from raw wounds. T. was an owner, and S. was the certificated manager, but neither was proved to be present or to have any notice or knowledge of the state of the horses:—Held, that the justices were wrong in convicting S. of illtreating the horses under 11 and 12 Vict. c. 92, s. 2, merely because he was certificated manager, and that some knowledge of the matter was an essential ingredient of that offence. *Small v. Warr*, 47 J. P. 20.

Delirium Tremens.—Drunkenness is no excuse, but delirium tremens caused by drinking, and differing from drunkenness, if it produces such a degree of madness, even for a time, as to render a person incapable of distinguishing right from wrong, relieves him from criminal responsibility. *Reg. v. Davis*, 14 Cox, C. C. 563. *And see post*, col. 20.

2. AGENTS.

Innocent Agent.—If a man does, by means of an innocent agent, an act which amounts to a felony, the employer, and not the agent, is accountable for the act. *Reg. v. Bleasdale*, 2 C. & K. 765.

If A., by letter, desires B., an innocent agent, to write the name of S. to a receipt on a post-office order, and the innocent agent does it, believing that he is authorized so to do, A. is a principal in this forgery, and it makes no difference, that, by the letter, A. says to B. that he is at liberty to sign the name of S., and does not in express words direct him to do so. *Reg. v. Clifford*, 2 C. & K. 902.

The prisoner employed a die-sinker to make, for a pretended innocent purpose, a die calculated to make shillings. The die-sinker, suspecting fraud, informed the commissioners of the Mint, and under their directions, made the die, for the purpose of detecting the prisoner:—Held, that the die-sinker was an innocent agent, and the prisoner rightly convicted as a principal under 2 & 3 Will. 4, c. 34, s. 10. *Reg. v. Bannen*, 2 M. C. C. 309; 1 C. & K. 295.

Where a prisoner, charged with uttering a forged note to A., knowing it to be forged, gave forged notes to a boy who was ignorant of that fact, and directed him to pay away the note

mentioned in the indictment at A.'s for the purchase of goods, and the boy did so, and brought back the goods and the change to the prisoner:—Held, that it was an uttering by the prisoner to A. *Reg. v. Giles*, Car. C. L. 191; 1 M. C. C. 166.

B. was one of many persons employed whose wages were paid weekly at a pay-table. On one occasion when B.'s wages were due the prisoner said to a little boy, "I will give you a penny if you will go and get B.'s money." The boy went innocently to the pay-table, and said to the treasurer, "I am come for B.'s money"; and B.'s wages were given to him:—Held, that the prisoner might be convicted of obtaining the money by false pretences. *Reg. v. Butcher*, Bell, C. C. 6; 8 Cox, C. C. 77; 28 L. J., M. C. 14; 4 Jur., N. S. 1155; 32 L. T., O. S. 110; 7 W. R. 38.

The prisoner knowing that some old country banknotes were valueless, gave them to a man to pass, telling him to say, if asked about them, that he had taken them from a man he did not know:—Held, that the prisoner was guilty of obtaining the money by false pretences. *Reg. v. Doney*, 11 Cox, C. C. 115; 37 L. J., M. C. 52; 17 L. T. 481; 16 W. R. 344.

A prisoner was indicted for the murder of her infant child by poison. She purchased a bottle of laudanum, and directed the person who had the care of the child to give it a teaspoonful every night. That person did not do so, but put the bottle on the mantelpiece, where another little child found it, and gave part of the contents to the prisoner's child, who soon after died:—Held, that the administering of the laudanum by the child was as much, in point of law, an administering by the prisoner, as if she herself had actually administered it with her own hand. *Reg. v. Michael*, 9 C. & P. 356; 2 M. C. C. 120.

Liability of Master for Acts of.]—The owner of works carried on for his benefit by his agents and servants, is liable to an indictment for a nuisance, resulting from the mode of carrying on the business, although such nuisance was committed in opposition to his orders, and without his knowledge, the proceedings by indictment in such case being criminal in form only. *Reg. v. Stephens*, 1 L. R., Q. B. 702; 35 L. J., Q. B. 251; 12 Jur., N. S. 961; 14 L. T. 593; 14 W. R. 859.

B. was a person who kept fireworks contrary to the statute. In his absence a fire broke out by the negligence of his servants, and a rocket ignited flew across the road and killed a person:—Held, that a conviction of manslaughter was wrong, as the death was caused by the servants' negligence. *Reg. v. Bennett*, Bell, C. C. 1; 8 Cox, C. C. 74; 28 L. J., M. C. 27; 4 Jur., N. S. 1088; 7 W. R. 40.

3. PERSONS UNDER COERCION AND COMPELSION.

a. Presumed Coercion of Wife.

When Crime Committed in Husband's Presence.]

—A wife cannot commit larceny in the company of her husband, for it is deemed his coercion and not her voluntary act. *Anon.*, 2 East, P. C. 559.

The law, out of tenderness to the wife, if a

felony is committed in the presence of the husband, raises a presumption *prima facie*, and *prima facie* only, that it was done under his coercion. *Reg. v. Hughes*, 2 Lewin, C. C. 229.

A wife went from house to house uttering base coin. Her husband accompanied her, but remained outside:—Held, that the wife acted under the husband's coercion. *Conolly's case*, 2 Lewin, C. C. 229.

Husband and wife were jointly tried upon an indictment charging them with feloniously wounding, with intent to disfigure. The jury found that the wife, at the time of the commission of the offence, acted under the coercion of her husband, and that she herself did not personally inflict any violence:—Held, that she could not be convicted. *Reg. v. Smith*, Dears. & B. C. C. 553; 8 Cox, C. C. 27; 27 L. J., M. C. 204; 4 Jur., N. S. 395.

If larceny is committed jointly by husband and wife, the latter is entitled to be acquitted, as she must be presumed to be under his coercion and control. *Reg. v. Knight*, 1 C. & P. 116.

Husband and wife were jointly indicted for a misdemeanor in uttering counterfeit coin:—Held, that the wife was entitled to an acquittal, as it appeared that she uttered the money in the presence of her husband. *Reg. v. Price*, 8 C. & P. 19.

But on an indictment against a married woman for falsely swearing herself to be next of kin, and procuring administration:—Held, that she might be guilty, although her husband was with her when she took the oath. *Reg. v. Dicks*, 1 Russ. C. & M. 16.

Receiving Stolen Goods.]—A wife cannot be convicted of feloniously receiving goods stolen by her husband. *Reg. v. Brooks*, Dears. C. C. 184; 6 Cox, C. C. 148; 22 L. J., M. C. 121; 17 Jur. 400.

A wife, jointly with her husband, cannot be convicted of receiving stolen goods. *Reg. v. Matthews*, T. & M. 337; 1 Den. C. C. 596; 14 Jur. 513.

Where both were found guilty on a joint indictment, the conviction of the husband affirmed, that of the wife quashed. *Id.*

Application to Confession.]—Where stolen goods are found in a man's house, and his wife, in his presence, makes a statement exonerating him, and criminating herself:—Sembie, that, with respect to the admissibility of this statement in evidence against her, it may be a question whether the doctrine of presumed coercion does not apply. *Reg. v. Lavagher*, 2 C. & K. 225.

Coining Implements Found in House.]—If coining implements are found in a house occupied by a man and his wife, the presumption is, that they are in the possession of the husband alone: unless there are circumstances to shew that the wife was acting separately and without her husband's sanction, they cannot both be convicted. *Reg. v. Booker*, 2 Cox, C. C. 272.

The fact of a wife attempting to break up coining implements at the time of her husband's apprehension, if done with the object of screening him, is no evidence of a guilty possession. *Id.*

Crimes Committed when Husband Absent.]

If a wife commits larceny in the absence of her husband, and by his mere command, she is

punishable as if she was sole, and the husband, it is said, may be accessory to the wife. *Anon.*, 2 East, P. C. 559.

A wife who takes an independent part in the commission of a crime, when her husband is not present, is not protected by her coverture. *Reg. v. John*, 13 Cox, C. C. 100.

A wife, by her husband's order and procuration, but in his absence, knowingly uttered a forged order and certificate for the payment of prize-money:—Held, that the presumption of coercion at the time of uttering did not arise, as the husband was absent; and that the wife might be convicted of the uttering, and the husband of procuring. *Reg. v. Morris*, R. & R. C. C. 270.

Husband and wife were jointly indicted for stealing. The husband was in the employ of the prosecutors, and was seen near the spot when the property stolen arrived at the prosecutors'. The next day the wife was seen near the spot where her husband was engaged on his work. She was at a spot where there was no road, with a bundle concealed, and was followed home. On the following day she pledged the stolen property at two different places. At one of the places where she was not known she pledged in a false name:—Held, that upon this evidence the wife might be convicted of stealing the property. *Reg. v. Cohen*, 11 Cox, C. C. 99; 18 L. T. 489; 16 W. R. 941.

Presumption may be Rebutted.]—The doctrine of coercion, as applicable to a crime committed by a married woman in the presence of her husband, only raises a disputable presumption of law in her favour, which is in all cases capable of being rebutted by the evidence. *Reg. v. Torpey*, 12 Cox, C. C. 45.

To what Offences Applicable.]—This disputable presumption of law exists in misdemeanors, as well as in felonies, and the question for the jury is the same in both cases. *Ib.*

The doctrine applies to the crime of robbery with violence. *Ib.*

If husband and wife jointly commit a murder, both are equally amenable to the law, as the doctrine of presumed coercion of the wife does not apply in murder. *Reg. v. Manning*, 2 C. & K. 903.

So also a wife is amenable as an accessory before the fact to a murder committed by her husband; but if the only part she took in the transaction was in harbouring and comforting her husband after the crime was committed, she is not liable as an accessory after the fact. *Ib.*

Indictment.]—Where a woman was indicted as "the wife of A.," it is sufficient proof that she was so, without adducing further evidence to prove that fact. *Reg. v. Knight*, 1 C. & P. 116.

Question to be left to Jury.]—A husband and wife were jointly indicted for receiving stolen goods, and both convicted:—Held, that as the charge against the husband and wife was joint, and it had not been left to the jury to say whether she received the goods in the absence of the husband, the conviction of the wife was wrong, though she had been more active than her husband. *Reg. v. Archer*, 1 M. C. C. 143.

Where, on the trial of a man and woman for larceny, it appears that they addressed each other

as husband and wife, and passed and appeared as such and were so spoken of by the witnesses for the prosecution, it will be for the jury to say whether they are satisfied that they are in fact husband and wife, even though the woman pleaded to the indictment, which described her as a single woman. *Reg. v. Woodward*, 8 C. & P. 561.

In such a case a female ought not to be indicted as a single woman. *Ib.*

A woman and her husband and P. were indicted jointly for burglary and receiving. The jury found P. guilty of housebreaking, and the woman and her husband of receiving. Part of the stolen property was found in the house where she and her husband lived together; and she, in the absence of her husband, some time after the housebreaking, was seen dealing with part of the stolen things, when she made a statement importing a knowledge that they had been stolen. The judge declined to leave it to the jury to find whether she received the stolen property from her husband or in his absence:—Held, that the conviction could not be supported. *Reg. v. Wardroper*, Bell, C. C. 249; 8 Cox, C. C. 284; 29 L. J., M. C. 116; 6 Jur., N. S. 232; 1 L. T. 416; 8 W. R. 217.

Evidence of Marriage.]—A woman was indicted for uttering counterfeit coin. At the time of the commission of the offence, she was in company with a man who went by the same name, and who was convicted at the previous assizes of the offence. When the prisoners were taken into custody, the constable addressed the female as the male prisoner's wife. He denied the fact in the hearing and presence of the woman. Since her commitment she had been confined of a child:—Held, that, under the circumstances, although the woman had not pleaded coverture, and even although she had not asserted she was married to the male prisoner when he stated she was not his wife, it was a question for the jury whether, taking the birth of the child and the whole circumstances, there was not evidence of the marriage, and the jury thought there was, and acquitted her. *Reg. v. McGinness*, 11 Cox, C. C. 391.

Where a woman is charged with comforting, harbouring and assisting a man who has committed a murder, if the counsel for the prosecution has reason to believe that she was married to the man, and it appears clearly that she considered herself as his wife, and lived with him as such for years, he will be justified in not offering any evidence against her, even though he has also reason to believe that the marriage was in some respects irregular, and, probably, invalid. *Reg. v. Good*, 1 C. & K. 185.

b. Other Persons under Compulsion.

When a Defence.]—An apprehension, though never so well grounded, of having property wasted or destroyed, or of suffering any other mischief not endangering the person, will afford no excuse for joining or continuing with rebels. *Reg. v. McGrother*, 1 East, P. C. 71.

But it is otherwise if the party joins from fear of death or by compulsion. *Reg. v. Gordon*, 1 East, P. C. 71.

On an indictment on 7 & 8 Geo. 4, c. 30, s. 4, for breaking a threshing-machine, the judge allowed a witness to be asked whether the mob,

by whom the machine was broken, did not compel persons to go with them, and then compel each person to give one blow to the machine; and also, whether at the time when the prisoner and himself were forced to join the mob, they did not agree together to run away from the mob the first opportunity. *Reg. v. Crutchley*, 5 C. & P. 133.

A., who was insane, collected a number of persons together, who armed themselves, having a common purpose of resisting the lawfully constituted authorities; A. having declared that he would cut down any constable who came against him. A., in the presence of C. and D., two of the persons of his party, afterwards shot an assistant of a constable, who came to apprehend A. under a warrant:—Held, that C. and D. were guilty of murder, as principals in the first degree, and that any apprehension that C. and D. had of personal danger to themselves from A., was no ground of defence for continuing with him after he had so declared his purpose; and also, that it was no ground of defence that A. and his party had no distinct or particular object in view when they assembled together and armed themselves. *Reg. v. Tyler*, 8 C. & P. 616.

The apprehension of personal danger does not furnish any excuse for assisting in doing any act which is illegal. *Id.*

4. CORPORATIONS.

When Liable.—A corporation aggregate may be guilty of a misdemeanor by nonfeasance, such as the non-repair of bridges which it is their duty to repair. *Reg. v. Birmingham and Gloucester Railway Company*, 3 Railw. Cas. 148; 2 G. & D. 236; 9 C. & P. 478; 3 Q. B. 223; 6 Jur. 804.

In such a case an indictment is maintainable against it in its corporate name. *Id.*

An indictment will lie against a corporation for a misfeasance at common law. *Reg. v. Great North of England Railway Company*, 9 Q. B. 315; 16 L. J., M. C. 16; 10 Jur. 755.

An incorporated company demurred to a bill in equity, because the discovery thereby sought might subject it to criminal prosecution under 59 Geo. 3, c. 69 (Foreign Enlistment Act):—Held, that a corporation was not liable to be indicted under that act, and the court overruled the demurrer. *Two Sicilies (King) v. Wilcox*, 1 Sim., N. S. 334; 19 L. J., Ch. 488; 14 Jur. 751.

Appearance—Certiorari.—If indicted in the Queen's Bench, they can appear by attorney; but if indicted at the assizes, or sessions, where they cannot appear by attorney, they should apply for a certiorari and appear by attorney, and compel appearance by distress infinite. *Reg. v. Birmingham and Gloucester Railway Company*, 9 C. & P. 478. See *S. C.*, 1 G. & D. 457; 3 Q. B. 223; 5 Jur. 40.

Certiorari—Recognizances.—Where an indictment against a corporation, for the non-repair of a highway, is removed by certiorari, at the instance of the prosecutor, the prosecutor is not required by 16 & 17 Vict. c. 30, s. 5, to enter into recognizances to pay the defendant's costs in case of acquittal, indictments against corporations being excepted from the operation of the act. *Reg. v. Manchester (Mayor, &c.)*, 7 El. & Bl. 453; 26 L. J., M. C. 65; 3 Jur., N. S. 839.

5. DEAF AND DUMB PERSONS.

Arraignment of Mute of Malice or by Act of God.—*See post*, TRIAL (Arraignment).

Not Understanding Proceedings at Trial.—A deaf mute being tried for felony, was found guilty, but the jury found also that he was incapable of understanding, and did not understand, the proceedings at the trial:—Held, that he could not be convicted, but must be detained as a non-sane person during the Queen's pleasure. *Reg. v. Berry*, 1 Q. B. D. 447; 45 L. J., M. C. 123; 34 L. T. 590; 13 Cox, C. C. 189.

6. DRUNKARDS.

No Defence.—Drunkenness is not, in law, any excuse for crime. *Pearson's case*, 2 Lewin, C. C. 144.

Although drunkenness is no excuse, delirium tremens caused by excessive drinking is different. If it produces such a degree of madness as to render the person incapable of distinguishing right from wrong at the time the offence is committed, he is relieved from criminal responsibility. *Reg. v. Davis*, 14 Cox, C. C. 563.

Drunkenness may rebut Malice.—In a case of stabbing where the prisoner has used a deadly weapon, the fact that he was drunk does not at all alter the nature of the case; but if he had intemperately used an instrument, not in its nature a deadly weapon, at a time when he was drunk, the fact of his being drunk might induce the jury to less strongly infer a malicious intent in him at the time. *Reg. v. Meakin*, 7 C. & P. 297.

If a man is drunk, this is no excuse for any crime he may commit; but where provocation by a blow has been given to a person, who kills another with a weapon which he happens to have in his hand, the drunkenness of the prisoner may be considered on the question, whether he was excited by passion, or acted from malice; as, also, it may be on the question, whether expressions used by the prisoner manifested a deliberate purpose, or were merely the idle expressions of a drunken man. *Reg. v. Thomas*, 7 C. & P. 817.

Though drunkenness is no excuse for crime, it may be taken into account by the jury, when considering the motive or intent of a person acting under its influence. *Reg. v. Gamlen*, 1 F. & F. 90.

Where, on the trial of an indictment for an attempt to commit suicide, it appeared that the prisoner was at the time of the alleged offence so drunk that she did not know what she did:—Held, that this negated the attempt to commit suicide. *Reg. v. Moore*, 3 C. & K. 319; 16 Jur. 750.

On a charge of attempting to commit suicide, the mere fact of drunkenness is no excuse for the crime; but it is a material fact for the jury to consider, before coming to the conclusion that the prisoner really intended to destroy his life. *Reg. v. Doody*, 6 Cox, C. C. 463.

7. FOREIGNERS.

A person naturalized in this country becomes, to all intents and purposes, a British subject, and ceases to be an alien. *Reg. v. Manning*, 2 C. & K. 903; T. & M. 155; 13 Jur. 962.

It is no defence on behalf of a foreigner charged in England with a crime committed there, that he did not know he was doing wrong, the act not being an offence in his own country. But though it is not a defence in law, yet it is a matter to be considered in mitigation of punishment. *Reg. v. Esop*, 7 C. & P. 456.

8. INFANTS.

Under Seven.—An infant, under the age of seven years, cannot incur the guilt of felony. *Marsh v. Loader*, 14 C. B., N. S. 535; 11 W. R. 784.

Under Fourteen.—If a child, more than seven and under fourteen years of age, is indicted for felony, it will be left to the jury to say whether the offence was committed by him, and, if so, whether, at the time of the offence, the prisoner had a guilty knowledge that he or she was doing wrong. The presumption of law is, that a child of that age has not such guilty knowledge, unless the contrary is proved. *Reg. v. Owen*, 4 C. & P. 236.

A boy under fourteen cannot be convicted of an assault with intent to commit a rape. *Reg. v. Eldershaw*, 3 C. & P. 366.

A boy who, at the time of the commission of the offence of rape, is under fourteen, cannot, in point of law, be guilty of an assault with intent to commit a rape; and if he is under that age, no evidence is admissible to shew that, in point of fact, he could commit the offence. *Reg. v. Phillips*, 8 C. & P. 736; *S. P.*, *Reg. v. Groombridge*, 7 C. & P. 582.

A boy under fourteen years of age cannot, by law, be convicted of feloniously carnally knowing and abusing a girl under ten years old, even though it was proved that he was arrived at the full state of puberty. *Reg. v. Jordan*, 9 C. & P. 118; *S. P.*, *Reg. v. Brimilow*, 9 C. & P. 366; 2 M. C. 122.

A child under fourteen, indicted for murder, must be proved conscious of the nature of the act. *Reg. v. Vamplew*, 3 F. & F. 520.

Where coining implements were found in the house occupied by a man, his wife, and a child ten years of age, the jury was directed to acquit the child of a felonious possession. *Reg. v. Booker*, 2 Cox, C. C. 272.

9. INSANE PERSONS.

When Insanity is a Defence.—To justify the acquittal of a prisoner indicted for murder, on the ground of insanity, the jury must be satisfied that he was incapable of judging between right and wrong; and that, at the time of committing the act, he did not consider that it was an offence against the laws of God and nature. *Reg. v. Offord*, 5 C. & P. 168.

If, to an indictment for treason for attempting the life of the Sovereign, by shooting at her Majesty, the defence is insanity, the question for the jury will be, whether the prisoner was labouring under that species of insanity which satisfies them that he was quite unaware of the nature, character, and consequences of the act he was committing, or, in other words, whether he was under the influence of a diseased mind, and was really unconscious at the time he was committing the act that it was a crime. *Reg. v. Oxford*, 9 C. & P. 525.

Semble, that, notwithstanding a party accused did an act which was in itself criminal, under the influence of an insane delusion, with a view of redressing or avenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable if he knew at the time that he was acting contrary to law. *Macnaghten's case*, 10 C. & F. 200; 8 Scott, N. R. 595; 1 C. & K. 130.

If the accused was conscious that the act was one which he ought not to do, and if the act was at the same time contrary to law, he is punishable. *Id.*

A party labouring under a partial delusion must be considered in the same situation, as to responsibility, as if the facts, in respect to which the delusion exists, were real. *Id.*

To entitle a prisoner to be acquitted on the ground of insanity, he must, at the time of the committing of the offence, have been so insane that he did not know right from wrong. *Reg. v. Higginson*, 1 C. & K. 129.

Where, upon a trial for murder, the plea of insanity is set up, the question for the jury is, did the prisoner do the act under a delusion, believing it to be other than it was? If he knew what he was doing, and that it was likely to cause death, and was contrary to the law of God and man, and that the law directed that persons who did such acts should be punished, he is guilty of murder. *Reg. v. Townley*, 3 F. & F. 839.

The circumstance of a person having acted under an irresistible influence to the commission of homicide, is no defence if at the time he committed the act he knew he was doing what was wrong. *Reg. v. Haynes*, 1 F. & F. 666.

A mere uncontrollable impulse of the mind, co-existing with the full possession of the reasoning powers, will not warrant an acquittal on the ground of insanity; the question for the jury being, whether the prisoner, at the time he committed the act, knew the character and nature of the act, and that it was a wrongful one. *Reg. v. Barton*, 3 Cox, C. C. 275.

On an indictment for maliciously setting fire to a building, it is not necessary to prove actual ill-will in the prisoner towards the owner; and in order to justify a jury in acquitting a prisoner on the ground of insanity, they must believe that he did not know right from wrong; but if they find that the prisoner, when he did the act, was in such a state of mind that he was not conscious that the effect of it would be to injure any other person:—Held, that this will amount to a general verdict of not guilty. *Reg. v. Davies*, 1 F. & F. 69.

Where a person is in a state of mind in which she is liable to fits of madness, it is for the jury to consider whether the act done was during such a fit, though there is nothing before or after the act to indicate it, and though there is some evidence of design and malice. *Reg. v. Richards*, 1 F. & F. 87.

Evidence—What Admissible.—Where an accused person is supposed to be insane, a medical man, who has been present in court and heard the evidence, may be asked, as a matter of science, whether the facts stated by the witnesses, supposing them to be true, shew a state of mind incapable of distinguishing between right and wrong. *Macnaghten's case*, 10 Cl. & F. 200; 8 Scott, N. R. 595; 1 C. & K. 130; *S. P.*, *Reg.*

v. Wright, R. & R., C. C. 456; Rex v. Searle, 1 M. & Rob. 75.

On a trial for murder evidence was called, on the prisoner's behalf, to prove his insanity. A physician, who had been in court during the whole trial, was then called on the part of the prosecution, and asked whether, having heard the whole evidence, he was of opinion that the prisoner, at the time he committed the alleged act, was of unsound mind?—Held, notwithstanding the opinion of the judges in *Reg. v. Macnaghten (supra)*, that such a question ought not to be put, but that the proper mode of examination was to take particular facts, and assuming them to be true, to ask the witness whether, in his judgment, they were indicative of insanity on the part of the prisoner at the time the alleged act was committed. *Reg. v. Frances, 4 Cox, C. C. 57.*

To ask a witness whether, in his opinion, the prisoner is capable of judging between right and wrong, is an improper question, for that is what no witness thought of, or is prepared to answer. *Reg. v. Layton, 4 Cox, C. C. 149.*

A medical witness should give his opinion as to the state of mind, not as to the responsibility of the prisoner; the latter is for the jury, under the direction of the judge. *Reg. v. Richards, 1 F. & F. 87.*

Presumption that Prisoner is Sane.—In all cases of this kind the jurors ought to be told, that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary is proved to their satisfaction; and that, to establish a defence on the ground of insanity, it must be clearly proved that, at the time of committing the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or that what he was doing was wrong. *Macnaghten's case, 10 Cl. & F. 200; 8 Scott, N. R. 595; 1 C. & K. 130.*

When the defence of insanity is set up, in order to warrant the jury in acquitting the prisoner, it must be proved affirmatively that he is insane; if the fact be left in doubt, and if the crime charged in the indictment is proved, it is their duty to convict. *Reg. v. Stokes, 3 C. & K. 185.*

Where a prisoner sets up insanity as a ground of defence, one cardinal rule is, that the burden of proving his innocence on that ground rests on the party accused. The question in such a case for the jury is not whether the prisoner was of sound mind, but whether he has made out to their satisfaction that he was not of sound mind. *Reg. v. Layton, 4 Cox, C. C. 149.*

Evidence on which Presumption Rebutted.—A married woman having killed her husband immediately after an apparent recovery from a disease (the result of childbirth) which caused a great loss of blood, and exhausted the vessels of the brain, and thus so weakened its power and so tended to produce insane delusions of the senses, which, while suffering under such disease, she complained of, and, which, by her own account, had been renewed at the time of the act of homicide (although they were not such as would lead to it):—Held, evidence from which a jury might properly find that she was not in such a state of mind at the time of the act as to know

its nature or be accountable for it. *Reg. v. Law, 2 F. & F. 836.*

Where a married woman, fondly attached to her children, and apparently most happy in her family, had poisoned two of them with some evidence of deliberation and design; but it appeared that there was insanity in her family; and, from her demeanour before and after the act, which, although not wholly irrational, yet was strangely erratic and excited; and from recent antecedents, and the presence of certain exciting causes of insanity, and her own account of her sensations, the medical men were of opinion that she was labouring under actual cerebral disease, and that she was in a paroxysm of insanity at the time of the act; this was left to the jury as evidence on which they might rightly find her not guilty on the ground of insanity. *Reg. v. Vyse, 3 F. & F. 247.*

The delusions which indicate a defect of sanity such as will relieve a person from criminal responsibility, are delusions of the senses, or such as relate to facts or objects—not mere wrong notions or impressions, or of a moral nature; and the aberration must be mental, not moral, to affect the intellect of the individual. It is not enough that they shew a diseased or a depraved state of mind, or an aberration of the moral feelings, the sense of right and wrong being still, although it may be perverted yet not destroyed; and the theory of a moral insanity, or insanity of the moral feelings, while the sense of right and wrong remains, is not to be reconciled with the legal doctrine on the subject. *Reg. v. Burton, 3 F. & F. 772.*

It was proved that the prisoner, a soldier, shot his officer through the head, the only evidence for the defence being that the act was sudden, without apparent motive, and that he had been addicted to drink, and had been suffering under depression:—Held, that this was not enough to raise the defence of insanity, that the sole question was whether the prisoner fired the gun intending to kill, and that his expressions soon after the act were evidence of this, and that alleged inadequacy of motive was immaterial, the question being not motive but intent. *Reg. v. Dixon, 11 Cox, C. C. 341.*

The jury may come to a conclusion on this point from the conduct and acts of the accused shortly before and down to the commission of the alleged crime. Although insanity on one point, for instance, a delusion as to property, will not exempt a party from responsibility, the fact is not immaterial in considering his responsibility at another time and on another subject. The want of motive for the commission of the crime, and its being committed under circumstances which render detection inevitable, are important points for the consideration of the jury, when coupled with evidence of insanity on any particular point. *Reg. v. Layton, 4 Cox, C. C. 149.*

On a trial for murder, the defence of insanity by the evidence shewing a great amount of senseless extravagance and absurd eccentricity of conduct, coupled with habits of excessive intemperance, causing fits of delirium tremens, the prisoner, however, not having been labouring under the effects of such a fit at the time of the act, and the circumstances shewing sense and deliberation, and a perfect understanding of the nature of the act:—Held, that the evidence was not sufficient to support the defence, as it rather tended to show wilful

excesses and extreme folly than mental incapacity. *Reg. v. Leigh*, 4 F. & F. 915.

Grand Jury should Find True Bill.]—A grand jury has no authority by law to ignore a bill for murder on the ground of insanity; it is their duty to find the bill; otherwise the court cannot order the detention of the party during the pleasure of the crown, either on arraignment or trial, under 39 & 40 Geo. 3, c. 94, ss. 1 & 2. *Reg. v. Hodges*, 8 C. & P. 195.

Trial—Prisoner must be Produced.]—Where a bill had been found against an insane prisoner for murder, and he had been removed by order of the secretary of state to the county lunatic asylum, and the governor of the asylum had made an affidavit that he was in a hopeless state of insanity, the court will nevertheless require that he be brought up, and his alleged insanity inquired into by a jury, unless it is shewn that it would be dangerous to bring him into court, and in that case the court will allow the witnesses their costs, and bind them over to appear when called upon. *Reg. v. Diverryhouse*, 2 Cox, C. C. 446.

— When Suggestion of Insanity should be made.]—A prisoner being arraigned on two indictments for murder, and having, with apparent intelligence, pleaded to one and declined to plead to the other, the plea of not guilty was entered for him by statute with the assent of his counsel. The case being then opened, and the first witness examined, and it being then set up by his counsel that he was insane, or not in a fit state to be tried:—Held, that the proper time for making that suggestion was before the prisoner pleaded; and, had it so been made, a jury should have been empannelled to try the question, whether he was sane and in a fit state to be tried, but as the trial had been begun, and it would be manifestly inconvenient to recommence the trial of the collateral issue, and as, moreover, the evidence as to the prisoner's present sanity was very much mixed up with the general question of his sanity, it was open to the court, under 39 & 40 Geo. 3, c. 94, to take the whole of the evidence, and then leave to the jury both questions as to his state of mind at the time of the act and at the time of the trial. *Reg. v. Southey*, 4 F. & F. 864.

— Prisoner Repudiating his Insanity.]—The prisoner was indicted for shooting at his wife with intent to murder her, and was defended by counsel, who set up for him the defence of insanity. The prisoner, however, objected to such a defence, asserting that he was not insane; and he was allowed by the judge to suggest questions to be put by his lordship to the witnesses for the prosecution, to negative the supposition that he was insane; and the judge also, at the request of the prisoner, allowed additional witnesses to be called on his behalf for the same purpose. They, however, failed in shewing that the defence was an incorrect one; and, on the contrary, their evidence tended to establish it more clearly, and the prisoner was acquitted on the ground of insanity. *Reg. v. Pearce*, 9 C. & P. 667.

Inquest—Evidence.]—A party having been indicted for a misdemeanour, of uttering seditious words, and upon his arraignment refusing to

plead, and shewing symptoms of insanity; and an inquest being forthwith taken under 39 & 40 Geo. 3, c. 94, s. 2, to try whether he was insane or not:—Held, first, that the jury might form their own judgment of the present state of the prisoner's mind from his demeanour while the inquest was being taken; and might thereupon find him to be insane, without any evidence being given as to his present state. *Reg. v. Goode*, 7 A. & E. 536.

Held, secondly, that, upon his shewing strong symptoms of insanity in court during the taking of the inquest, it became unnecessary to ask him whether he would cross-examine the witnesses, or would offer any remark on the evidence. *Id.*

— Onus of Proof.]—Where a jury is impannelled to try whether a prisoner is insane or not at the time when he is brought up to plead to an indictment, the counsel for the prosecution is to begin and call his witnesses to prove the sanity of the prisoner. *Reg. v. Davis*, 6 Cox, C. C. 326; 3 C. & K. 328.

But where a jury is impannelled, at the instance of the counsel for a prisoner, to try whether he is insane or not at the time when brought up to plead to an indictment, the proof of the insanity is incumbent on his counsel. *Reg. v. Turton*, 6 Cox, C. C. 385.

Commitment.]—A commitment of an insane person, under 39 & 40 Geo. 3, c. 94, s. 3, is not a commitment in execution, and is not to be construed with the same strictness. *Reg. v. Gourlay*, 7 B. & C. 669; 1 M. & R. 619. *But see* 1 & 2 Vict. c. 14.

10. PEERS.

(4 & 5 Vict. c. 22.)

II. DEGREES OF CRIMINALITY.

1. *Principals.*
2. *Accessories.* 35.
3. *Practice relating thereto*, 39.

1. PRINCIPALS.

When Act Committed by Means of Innocent Agent.]—*See ante*, col. 14.

Presence at Time of Committing Offence.]—If all the prisoners on an indictment for poaching are associated together for that common purpose, and some of the party actually enter a field to effect that purpose, while the others remain near enough to aid and assist, they may all be convicted under an indictment charging them with being in such place for such purpose. *Reg. v. Whittaker*, 2 C. & K. 636; 1 Den. C. C. 310; 3 Cox, C. C. 50; 17 L. J., M. C. 127.

On a charge of poaching it is not necessary to prove that all the prisoners were within the same close if they all were of one party with the same purpose in the place described in the indictment. *Reg. v. Eaton*, 2 Den. C. C. 274; T. & M. 598.

To support an indictment for night-poaching by three or more, it is not sufficient to prove that one of the prisoners was in the place laid in the indictment and that the rest of the party was in another wood which was separated from the place mentioned in the indictment by a turnpike road. *Reg. v. Dowsell*, 6 C. & P. 398.

Those who are watching at the outside of a preserve for the purpose of giving the alarm, on the approach of the gamekeeper, to others who are in the preserve, and who afterwards go into the preserve for that purpose, are equally guilty with those who enter the preserve at first. *Reg. v. Passey*, 7 C. & P. 282.

On a charge of personating a seaman, all persons aiding and abetting are principals, and the offence is not confined to the person only who personates the seaman. *Reg. v. Potts*, R. & R., C. C. 353.

Where two persons go out to fight a deliberate duel and death ensues, all persons who are present encouraging and promoting that death will be guilty of murder. *Reg. v. Cuddy*, 1 C. & K. 210.

Mere presence at a duel is not sufficient to make spectators principals in the combat; if, however, they sustain the principals either by advice or assistance, or go to the ground for the purpose of encouraging and forwarding the unlawful conflict, although they do not say or do anything, yet if they are present assisting and encouraging by their presence at the moment when the fatal shot is fired, they are, in law, guilty of murder. *Reg. v. Young*, 8 C. & P. 644.

If two utterers of counterfeit coin, with a general community of purpose, go different ways, and utter coin apart from each other, and not near enough to assist each other, their respective utterings are not joint utterings by both. *Reg. v. Manners*, 7 C. & P. 801. See *Reg. v. Hurse*, 2 M. & Rob. 360.

On an indictment for a joint uttering of counterfeit coin where both are not present at the time of the uttering, the true question seems to be whether the one was so near the other as to help the other to get rid of the counterfeit coin. *Reg. v. Jones*, 9 C. & P. 761; 2 M. C. C. 85; 2 Lewin, C. C. 119, 297.

Two prisoners together uttered counterfeit coin; they separated and one of them uttered on two occasions two counterfeit coins, but at the last utterings the former was not proved to have been near the other:—Held, that the proof of previous concert would not sustain a count of joint uttering in either the second or third utterings. *Reg. v. West*, 2 Cox, C. C. 237.

If a man encourages another to murder himself, and is present abetting him while he does so, such person is guilty of murder as principal. *Reg. v. Dyson*, R. & R., C. C. 523.

Where three persons were indicted jointly for cutting and wounding, and the third of them did not come up to the spot until after one of the first two had got away, and then kicked the prosecutor while he was on the ground struggling with the other:—Held, that the two who jointly assaulted the prosecutor, and wounded him at first, might be found guilty either of the felony, or of the assault only, but that the third must, under the circumstances, be acquitted altogether. *Reg. v. McPhane*, Car. & M. 212.

Where a prosecutor left his goods in a cart standing in the street, and M. came and led the cart away, and having taken it a short distance, delivered it to another man with directions to take it to his, M.'s, house. Upon the cart arriving at the house, S., who was at work in the cellar, having directed a companion to blow out the light, came up and assisted in removing the goods from the cart:—Held, that S. could not be in-

dicted as a principal. *Reg. v. Mahin*, R. & R. C. C. 333, n. And see *Reg. v. Dyer*, 2 East, P. C. 767.

In order to constitute the offence of stealing in a dwelling-house, and by menaces and threats putting persons being therein in bodily fear, it is not necessary that all the persons engaged in the crime should be actually in the house; and if one remains outside, he may be equally guilty of using menaces and threats, if there was a common purpose to inspire terror. *Reg. v. Murphy*, 6 Cox, C. C. 340.

A. and B. were indicted for larceny as principals; A. had been sent by his master to deliver goods to C. He only delivered part, and the rest was stolen, and found in the possession of B.:—Held, that it was a question for the jury whether B. was present at the time when A. separated the stolen portion from the bulk; for that if he was, both were rightly charged as principals. *Reg. v. Butcher*, 6 C. & P. 147.

J. had employed M. to load sacks of oats, the property of J., from a vessel in the trams of K., who was to carry them on the trams to the warehouse of K. By previous concert between M. and K., oats were taken by M. from two of the sacks and put into a nose-bag in the absence of K., and hidden under a tram. K. returned in a few minutes, and took the nose-bag, and its contents, from under the tram, and took them away. M. being then within three or four yards of him:—Held, that, as it was all one transaction, and both had concurred in it, and both had been present at some part of the transaction, both could be convicted as principals in the larceny. *Reg. v. McCarthy*, 2 C. & K. 379.

Where, on an indictment for privately stealing in a shop, it appeared that there were several acting together, some in the shop and some out, for the purpose of assisting those in the shop, and the property was stolen by the hands of one of those who were in the shop:—Held, that those who were on the outside were equally guilty as principals. *Reg. v. Gogerty*, R. & R. C. C. 343.

Going towards a place where a felony is to be committed in order to assist in carrying off the property, and assisting accordingly, will not make a man a principal, if he was at such a distance at the time of the felonious taking as not to be able to assist in it. *Reg. v. Kelly*, R. & R. C. C. 421.

A person waiting outside of a house to receive goods, which a confederate is stealing in the house, is a principal in the theft. *Reg. v. Owen*, 1 M. C. C. 96.

It is not sufficient to make a man a principal in uttering a forged note, that he came with the utterer to the town where it was uttered, went out with him from the inn where they put up, joined him again in the street after the uttering at a little distance, and ran away when the utterer was apprehended. *Reg. v. Davis*, R. & R. C. C. 113.

If A. unlocks a door of a room of which he has the key, in order to allow B. to commit a larceny in it, and A. then goes away, and B., in his absence, enters the room and removes articles out of it, A. is not a principal in the larceny. *Reg. v. Jeffries*, 3 Cox, C. C. 85.

A room door was latched, and one person lifted the latch and entered the room and concealed himself, for the purpose of committing a robbery there, which he afterwards accomplished. Two other persons were present with him at the time

he lifted the latch, for the purpose of assisting him to enter, and screened him from observation by opening an umbrella :—Held, that the two were in law parties to the breaking and entering and were answerable for the robbery which took place afterwards, though they were not near the spot at the time when it was perpetrated. *Reg. v. Jordan*, 7 Car. & P. 432.

If several plan the uttering of a forged order for payment of money, and it is uttered accordingly by one in the absence of the others, the actual utterer is alone the principal. *Reg. v. Badoock*, R. & R. C. C. 249.

If several combine to forge Bank of England notes, and each executes by himself a distinct part of the forgery, but they are not together when the notes are completed, they are nevertheless all guilty as principals. *Reg. v. Bingley*, R. & R. C. C. 446.

If several make distinct parts of a forged instrument, each is a principal, though he does not know by whom the other parts are executed, and though it is finished by one alone in the absence of the others. *Reg. v. Kirkwood*, 1 M. C. C. 304.

The makers of the paper and plate respectively, for the purpose of forging a note afterwards filled up by a third person, are principals in the forgery with that person, though each executed his part in the absence of the others, and without knowing by whom the other parts were executed. *Reg. v. Dade*, 1 M. C. C. 307.

Persons not present, nor sufficiently near to give assistance at the time of uttering forged notes, are not principals, although they may be accessories before the fact. *Reg. v. Stewart*, R. & R. C. C. 363.

— **Where Principal Insane.**—A count in an indictment charged A. with the murder of B., and also charged C. and D. with being present, aiding and abetting A. in the commission of the murder. A. was an insane person :—Held, therefore, that C. and D. could not be convicted on this count. *Reg. v. Tyler*, 8 C. & P. 616.

When Common Purpose Exists between the Parties.—If several are out for the purpose of committing a felony, and upon an alarm run different ways, and one of them maims a pursuer to avoid being taken, the others are not to be considered principals in such act. *Reg. v. White*, R. & R. C. C. 99.

If several act in concert to steal a man's goods, and he is induced by fraud to trust one of them in the presence of the others with the possession of the goods, and then another of the party entices the owner away, in order that the party who has obtained possession of the goods may carry them off, all will be guilty of the felony ; the receipt by one, under such circumstances, being a felonious taking by all. *Reg. v. Standley*, R. & R. C. C. 305.

Where two planned to rob the prosecutrix of some coats, and one got her to go with him that he might get some money to buy them of her, and she left the coats with the other, who immediately absconded with them :—Held, that the receipt by the one amounted to a felonious taking of the coats by both. *Reg. v. County*, 2 Russ. C. & M. 230, 329.

Where the evidence against two, indicted for stealing oats, was that one of them took the oats from the prosecutor's sacks, and placed

them under a cart, and the other came up a few minutes after, and said, "It is all right," and put the oats in a cart and took them to his house ; on an objection that there was no evidence to connect the latter with the original taking :—Held, that the evidence shewed one transaction in which both concurred. *Reg. v. Kelly*, 2 Cox, C. C. 171.

A. received goods from B. (who was the servant of C.) under colour of a pretended sale :—Held, that the fact of his having received such goods with knowledge that B. had no authority to sell, and that he was in fact defrauding his master, was sufficient evidence to support an indictment for larceny against A. jointly with B. *Reg. v. Hornby*, 1 C. & K. 305.

If two jointly prepare counterfeit coin, and utter it in different shops apart from each other, but in concert, and intending to share the proceeds, the utterings of each are the joint utterings of both, and they may be convicted jointly. *Reg. v. Harse*, 2 M. & Rob. 360.

A., who intended to sell his mare, sent his servant to M. fair, his servant having no authority either to sell the mare or deal with her in any way. The prisoner asked the servant the price, and desired the servant to trot her out ; and the prisoner then went to two men, and, having talked to them, walked away. These two men then came up and persuaded the servant to exchange the mare for a horse they had, and they would give 24*l.* for the chop. They changed the saddles, and, without giving any money, rode away with the mare, leaving the servant with a horse of little value. Four days after the prisoner sold the mare at B., stating that he had got her in a chop at M. fair :—Held, that the prisoner ought to be convicted of stealing her, provided that the jury was satisfied that the prisoner was in league with the two other men, and that the three, by a fraud in which each of them was to take his part and did take his part, induced the servant to part with possession of the mare under colour of exchange, but intending all the while to steal the mare. *Reg. v. Sheppard*, 9 C. & P. 121.

If three persons go out together poaching and two of them stand in the road and send their dog into a field to drive out hares, and after this the third leaves them in the road and goes poaching on his own account, this will not support an indictment against the three, as the third prisoner's poaching was not the joint act of the three. *Reg. v. Nickless*, 8 C. & P. 757.

If one of a party of poachers is found in the land specified, the rest co-operating in the pursuit in adjoining land, all may be alleged to be found in the land specified. *Reg. v. Andrews*, 2 M. & Rob. 37 ; *S. P.*, *Reg. v. Lockett*, 7 C. & P. 300.

But if a gang of poachers attacks a game-keeper and leaves him senseless on the ground, and one of them returns and steals his money :—Held, that one only can be convicted of the robbery, as it was not in pursuance of any common intent. *Reg. v. Hawkins*, 3 C. & P. 392.

Two of the prisoners were seen together running out of a coppice, one of them with a gun. The third immediately afterwards came out of it alone with a gun and a pheasant :—Held, insufficient evidence of concert. *Reg. v. Jones*, 2 Cox, C. C. 185.

The offence of poaching is complete if three persons are in one common party unlawfully

upon any land for the common purpose of illegally destroying game. *Reg. v. Nezeell*, 3 C. & K. 150; 2 Den. C. C. 274; 5 Cox, C. C. 188; 20 L. J. M. C. 192; 15 Jur. 434.

A., B. and C. were indicted for having robbed and beaten D. A. knocked D. down and it was imputed that B. and C. stole the property from his pockets:—Held, that if B. and C. stole the property and A. did not participate in the robbery, A. could not be convicted of an assault, as the assault committed by him was an independent assault unconnected with the robbery; but that if the jury thought that D. was not robbed by any of the prisoners, but had been assaulted by all of them, they might find all guilty of the assault. *Reg. v. Barnett*, 2 C. & K. 594; 3 Cox, C. C. 432.

If gamekeepers attempt to apprehend a gang of night poachers, and one of the gamekeepers is shot by one of the poachers, this will be murder in all the poachers, unless it can be proved that either of them separated himself from the rest, so as to shew that he did not join in the act. *Rea v. Edmeads*, 3 C. & P. 390.

Where gamekeepers had secured two poachers, and they, having surrendered, called to a third, who came up and killed one of the gamekeepers, this is murder in all, though the two struck no blow, and though the gamekeepers had not announced in what capacity they had apprehended them. *Rea v. Whithorne*, 3 C. & P. 394.

All persons who even by their presence encourage a fight, from which death ensues to one of the combatants, although they neither say nor do anything, are guilty of manslaughter. But if the death is caused, not by blows given in the fight itself, but by other parties breaking the ring and striking the deceased with bludgeons, the persons who merely encouraged the fight by their presence are not answerable. *Rea v. Murphy*, 6 C. & P. 103.

If A. and B. agree together to assault C. with their fists, and C. is killed by a chance blow of the fists from either of them, both are guilty of manslaughter. But should A., of his own impulse, kill C. with a weapon suddenly caught up, B. would not be responsible for the death, he being only liable for acts done in pursuance of the common design of himself and A. *Reg. v. Caton*, 12 Cox, C. C. 624.

All those who assemble themselves together, with an intent even to commit a trespass, the execution whereof causes a felony to be committed; and continue together, abetting one another, till they have actually put their design into execution; and also all those who are present when a felony is committed, and abet the doing of it, are principals in felony. *Reg. v. Howell*, 9 C. & P. 437.

Where two persons are jointly engaged in an unlawful act, they may be severally convicted thereof. *Mayhew v. Wardley*, 14 C. B., N. S. 550; 8 L. T. 504.

If each of two persons is driving a cart at a dangerous rate and they are inviting each other to drive at a dangerous rate, and one of the carts runs over a man and kills him, each of the two is guilty of manslaughter. *Reg. v. Swindall*, 2 C. & K. 230; 2 Cox, C. C. 141.

If A. and B. are riding fast along a highway as if racing, and A. rides by without doing any mischief, but B. rides against the horse of C., whereby C. is thrown and killed, this is not manslaughter in A. *Rea v. Mastin*, 6 C. & P. 396.

If two or more persons go out together with a purpose to commit a breach of the peace, and, in the course of the accomplishment of that common design, one of them kills a man, the other also is guilty of manslaughter. *Reg. v. Harrington*, 5 Cox, C. C. 231.

Two private watchmen, seeing the prisoner and another person with two carts laden with apples, went up to them, intending, as soon as they could get assistance, to secure them; one of the watchmen walked beside the prisoner, and the other watchman beside the other person, at some distance from the prisoner. The other person wounded the watchman who was near him:—Held, that the prisoner could not be convicted of this wounding, unless the jury should be satisfied that the prisoner and the other person had not only gone out with a common purpose of stealing apples, but also had the common purpose of resisting, with extreme violence, any person who might attempt to apprehend them. *Rea v. Collison*, 4 C. & P. 565.

The doctrine of constructive homicide, as regards offenders not actually present at, or parties to, an act of homicide, but sought to be made liable for it, by reason of their being engaged in a common purpose, in the course of carrying out which the act of homicide occurs, only applies (there being no evidence of a common intent to carry out the purpose at all hazards, and by all means) where the common purpose is felonious; not where it is merely unlawful, as in the case of a misdemeanor, such as night-poaching. *Reg. v. Sheet*, 4 F. & F. 931.

Therefore, where several men were engaged at night-poaching, and in a scuffle with a gamekeeper, he was killed by a shot from the gun of one of them:—Held, that whether or not the gun was fired, there being no evidence to shew that the other prisoners were parties to the act of firing it, they were not guilty even of manslaughter, merely by reason of the act of homicide occurring in the course of poaching. *Id.*

More than nine men, of whom seven were armed with guns, being out at night in pursuit of game, were met, as they passed through a field from one wood to another, by a party of gamekeepers with-out firearms, but who at once assaulted them with sticks; and one of them with a dangerous weapon, a flail, likely to inflict deadly injury, with which he struck one of the poachers, upon which another of them fired and killed him. The grand jury was directed to throw out bills for murder against two of the men, one of whom was supposed to have fired the fatal shot, and the whole nine were indicted for manslaughter. There was evidence that they all stood in a row and cried "Shoot":—Held, that whether or not the man who fired the shot could be identified, none of the prisoners would be guilty unless parties to the act of firing; and that though their being in a row and crying out "Shoot" was evidence that they were parties to the act, it was only evidence, and its effect would depend upon how far all the circumstances shewed that the firing was in pursuance of a common design to shoot, or only in consequence of a particular personal encounter. *Reg. v. Luck*, 3 F. & F. 483.

On an indictment of A. and B. for murder, it appeared that both followed the deceased out at night, and that A., who was the first to overtake him, threw him down a steep bank into a wet ditch, and then tried to rob him, and not being able, owing to his resistance, called to B., who

then was on the top of the bank, to come and help, which he did, and they both forcibly committed the robbery. It did not appear that there was any serious injury, except that caused by the fall, and the deceased died three weeks afterwards of pneumonia, or inflammation of the lungs, which might either be caused by cold or violence:—Held, that though there was evidence against both for murder, there was not sufficient to convict, unless the jury was satisfied that there was a joint design to commit the violence, nor to convict either, unless satisfied that it caused the death. *Reg. v. Lee*, 4 F. & F. 63.

Where two persons go out with the common object of robbing a third person, and one of them, in pursuit of that common object, does an act which causes the death of that third person, under such circumstances as to be murder in him who does the act, it is murder in the other also. *Reg. v. Jackson*, 7 Cox, C. C. 357.

On an indictment for wounding, with intent to do some grievous bodily harm, it appeared that two persons, one of whom was the prisoner, attacked and wounded the prosecutor and robbed him; it was not proved which of the persons inflicted the wound:—Held, that if the prisoner inflicted the wound on the prosecutor, with intent to rob him, he having at the same time an intent to do him some grievous bodily harm to effectuate such his intention of robbing, he ought to be convicted on this indictment. *Reg. v. Bowen*, Car. & M. 149.

Held, also, that even if the prisoner's was not the hand that inflicted the wound, he ought to be convicted, if the jury was satisfied that the two persons were engaged in the common purpose of robbing the prosecutor, and that the other person's was the hand which inflicted the wound. *Ib.*

If A. is charged with the offence of inflicting an injury dangerous to life, with intent to murder, and B. is charged with aiding and abetting him, it is essential, to make out the charge as against B., that B. should have been aware of A.'s intention to commit murder. *Reg. v. Cruise*, 8 C. & P. 41.

Persons present, aiding and abetting, are principals in the second degree, and are within the Riot Act. *Rex v. Royce*, 4 Burr. 2073.

Cannot be Treated as Receiver.]—A principal in the second degree cannot at the same time be treated as a receiver. *Reg. v. Perkins*, 2 Den. C. C. 459; 5 Cox, C. C. 554; 21 L. J., M. C. 152; 16 Jur. 481.

In Misdemeanors.]—By 24 & 25 Vict. c. 94, s. 8, *whosoever shall aid, abet, counsel, or procure the commission of any misdemeanor, whether the same be a misdemeanor at common law or by virtue of any act passed or to be passed, shall be liable to be tried, indicted, and punished as a principal offender.* (Former provision, 7 & 8 Geo. 4, c. 30, s. 26.)

In misdemeanors all guilty participators are principals. *Reg. v. Greenwood*, 2 Den. C. C. 453; 5 Cox, C. C. 521; 21 L. J., M. C. 127; 16 Jur. 390.

Two men fought with each other in a ring, formed by ropes supported by posts, in the presence of a large crowd. Amongst that crowd were the prisoners. It did not appear that the prisoners took any active part in the management of the fight, or that they said or did any-

thing. They were tried and convicted of assault, as being principals in the second degree. The jury were directed that prize-fights are illegal, and that all persons who go to a prize-fight to see the combatants strike each other and who are present when they do so, are guilty in law of an assault, and that if the persons charged were not casually passing by, but stayed at the place, they encouraged the fight by their presence, although they did not do or say anything. Upon this direction the jury found the prisoners guilty; but added, that they did so in consequence of such direction of law, as they found that the prisoners did not aid or abet:—Held, by Denman, J., Huddleston, B., Manisty, Hawkins, Lopes, Stephen, Cave, and North, J.J. (Lord Coleridge, C. J., Pollock, B., and Mathew, J., dissenting), that the above direction was not correct, that mere voluntary presence at a fight does not as a matter of law necessarily render persons so present guilty of an assault as aiding and abetting in such fight, and that the conviction could not be sustained. *Reg. v. Coney*, 8 Q. B. D. 534; 15 Cox, C. C. 46; 51 L. J., M. C. 66; 46 L. T. 307; 30 W. R. 678; 46 J. P. 404.

Held, by Lord Coleridge, C. J., Pollock, B., and Mathew, J., that the conviction could be sustained, that the legal inference to be drawn from mere presence, as a voluntary spectator, at a prize-fight is, in the absence of other evidence to rebut such inference, that the person so present is encouraging, aiding, and abetting such fight, and consequently guilty of assault. *Ib.*

Seemle, that mere presence of a person, unexplained, at a prize-fight affords some evidence for the consideration of a jury of an aiding or abetting in such fight. *Ib.*

Persons who are present at a prize-fight and who have gone thither with the purpose of seeing the persons strike each other, are all principals in the breach of the peace, and indictable for an assault, as well as the actual combatants, and it is not at all material which of the combatants struck the first blow. *Rex v. Perkins*, 4 C. & P. 537.

A woman was delivered of a child, which died shortly after its birth; she concurred with her paramour in endeavouring to conceal the birth, and he, in consequence of her persuasion, she remaining in bed, took the body and buried it in a field, intending thereby to conceal the birth:—Held, that he could be convicted of counselling, aiding, and abetting her in the offence. *Reg. v. Bird*, 2 C. & K. 817; *S. P.*, *Reg. v. Shelton*, 3 C. & K. 119.

B. was summoned before justices for aiding and abetting S. to obtain money by false pretences, and both were committed for trial, S. on the charge of attempting to obtain money by false pretences, and B. on the charge of aiding and abetting S. to commit that offence. B. was found guilty and S. acquitted:—Held, that B. was rightly convicted, as in misdemeanors all are principals. *Reg. v. Burton*, 32 L. T. 539.

When several persons are found out together by night for the common purpose of housebreaking, and one only is in possession of the house-breaking implements, all may be found guilty of the misdemeanor of being found by night in possession of implements of housebreaking, without lawful excuse, under 24 & 25 Vict. c. 96, s. 58, for the possession of one is in such case the possession of all. *Reg. v. Thompson*, 11 Cox, C. C. 362; 21 L. T. 397.

The prisoner and J. were indicted for a misdemeanor in uttering counterfeit coin. The uttering was effected by J. in the absence of the prisoner, but the jury found that they were both engaged on the evening on which the uttering took place, in the common purpose of uttering counterfeit shillings, and that in pursuance of that common purpose J. uttered the coin in question.—Held, that the prisoner was rightly convicted as a principal, there being no accessories in a misdemeanor. *Reg. v. Greenwood*, 2 Den. C. C. 453; 5 Cox, C. C. 521; 21 L. J., M. C. 127; 16 Jur. 390.

On an indictment for obtaining money under false pretences, a party who has concurred and assisted in the fraud may be convicted as principal, though not present at the time of making the pretence and obtaining the money. *Reg. v. Moland*, 2 M. C. C. 276.

An indictment against H. and W. charged H. with rape, and W. with aiding and abetting the rape. They were found not guilty, but the jury found H. guilty of attempting to commit the rape charged, and W. of aiding and abetting H. in the attempt.—Held, that H. was rightly convicted of a misdemeanor. *Reg. v. Haggood*, 1 L. R., C. C. 221; 39 L. J., M. C. 82; 21 L. T. 678; 18 W. R. 356.

If A. counsels and encourages B. to set fire to a malthouse, and B. attempts to set it on fire, both may be jointly indicted as principals for the misdemeanor of attempting to set the malthouse on fire, although A. was not present at the time of the attempt. *Reg. v. Clayton*, 1 C. & K. 128.

2. ACCESSORIES.

Before the Fact.—By 24 & 25 Vict. c. 94, s. 1, *whosoever shall become an accessory before the fact to any felony, whether the same be a felony at common law or by virtue of any act passed or to be passed, may be indicted, tried, convicted and punished in all respects as if he were a principal felon.* (Former provision, 11 & 12 Vict. c. 46, s. 1.)

By s. 2, *whosoever shall counsel, procure or command any other person to commit any felony, whether the same be a felony at common law or by virtue of any act passed or to be passed, shall be guilty of felony, and may be indicted and convicted either as an accessory before the fact to the principal felony, together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, and may thereupon be punished in the same manner as any accessory before the fact to the same felony, if convicted as an accessory, may be punished.* (Former provision, 7 Geo. 4, c. 64, s. 9.)

A., a married woman, in the lifetime of her husband, married B., a widower:—Held, that if B. knew at the time of his marriage with A. that she was a married woman, he might be convicted of the felony of counselling A. to commit bigamy. *Reg. v. Brawn*, 1 C. & K. 144; 1 Cox, C. C. 33.

A servant pretended to concur with two persons who proposed to him to unite with him in robbing his master's house. The servant acting under instructions from the police let one of them into the house, who was immediately placed in confinement. After this the servant fetched the

other prisoner and let him into the house in the same way. This person was seized with a basket of plate in his hand:—Held, that the former prisoner might be indicted as an accessory before the fact to the stealing. *Reg. v. Jones*, Car. & M. 218.

No Felony Committed.—A person cannot be indicted under the 24 & 25 Vict. c. 94, s. 2, for counselling another to commit a felony, unless a felony is actually committed by such other person. *Reg. v. Gregory*, 1 L. R., C. C. 77; 36 L. J., M. C. 60; 16 L. T. 388; 15 W. R. 774; 10 Cox, C. C. 459.

A soliciting and inciting a person to commit an offence where no other act is done except the soliciting and inciting, is a misdemeanor only. *Id.*

To incite a servant to rob his master is a misdemeanor at common law, and it is no defence that the servant purposely submitted himself to the incitement with intent to betray the master. *Reg. v. Quail*, 4 F. & F. 1076.

In what Cases.—A person is not to be convicted of larceny if doubtful whether an accessory before or after the fact. *Reg. v. Monday*, 2 F. & F. 170.

A servant let a person into his master's house on a Saturday afternoon, and concealed him there all night in order that he might rob the house; and on the Sunday morning left the premises in pursuance of the previous arrangement. The man, in the servant's absence, broke into the bedroom of the master, and stole the contents of the cash-box:—Held, that the man who took the property from the cash-box was rightly charged as a thief, and the servant who let him into the house as an accessory before the fact. *Reg. v. Tuckwell*, Car. & M. 215.

If a wife, by the incitement of her husband, knowingly uttered in his absence a forged order and certificate for the reception of prize-money, under 43 Geo. 3, c. 123, they might be indicted together, she as a principal on the statute, and he as an accessory, before the fact, at common law. *Reg. v. Morris*, 2 Leach, C. C. 1096.

Persons privy to the uttering of a forged note by previous concert with the utterer, but who were not present at the time of uttering, or so near as to be able to afford any aid or assistance, are not principals, but accessories before the fact. *Reg. v. Soares*, R. & R. C. C. 25; 2 East, P. C. 974.

The deceased woman became pregnant by the prisoner, and died from the effects of corrosive sublimate taken by her for the purpose of producing abortion. The prisoner knowingly procured it for the deceased, at her instigation, and under the influence of threats of self-destruction, if the means of producing abortion were not supplied to her. The jury negatived the fact of his having administered it, or caused it to be taken by her:—Held, that he was not guilty of murder as an accessory before the fact. *Reg. v. Fretwell*, 9 Cox, C. C. 153; L. & C. 161; 31 L. J., M. C. 145; 8 Jur., N. S. 466; 6 L. T. 333; 10 W. R. 545. *But see* 24 & 25 Vict. c. 100, ss. 58, 59.

M. had the charge of the prosecutor's warehouse, in which bags were kept; S. for some years had been in the habit of supplying the prosecutor with bags, which were usually placed outside the warehouse, and shortly after so leaving them

either S. or his wife called and received payment for them. M. went into his master's warehouse, and clandestinely removed twenty-four bags which had been marked by his master, and placed them outside the warehouse, in the place where S. used to deposit the bags before payment for them. Soon afterwards the wife of S. came and claimed payment for these bags. The prosecutor then sent for S., who, upon being asked respecting the twenty-four bags, said they had been placed there an hour previously by him, and demanded payment for them. The jury found that the bags had been so removed in pursuance of a previous arrangement between the prisoners:—Held, that S. was an accessory before the fact to the larceny. *Reg. v. Manning*, Dears. C. C. 21; 5 Cox, C. C. 86; 22 L. J., M. C. 21; 17 Jur. 28.

A man and woman were jointly indicted for feloniously administering to C. a noxious thing to the jurors unknown, with intent to procure miscarriage. C. being in the family way, went to the male prisoner, who said he would give her some stuff to put her right, and gave her a light-coloured medicine, and told her to take doses of it till she became in pain. She did so, and it made her ill. She then went to him again, and he said the safest course would be to get her a place to go to. He told her that he had found a place for her at L., and gave her some more of the stuff, which he said would take effect when she got there. They went together to L. and met the female prisoner, who said she had been down to the station several times the day before to meet them. C. then began to feel pain, and told the female prisoner of it, whereupon the male prisoner told the latter what he had given C. They all went home to the female prisoner's, and the male prisoner then gave C. another bottle of similar stuff in the female prisoner's presence, and told her to take it like the other. She did so, and became very ill, and next day had a miscarriage, the female prisoner attending on her:—Held, that there was evidence of the female being an accessory before the fact, and a party, therefore, to the administration of the noxious thing. *Reg. v. Hollis*, 28 L. T. 455.

If a person knowingly invites another to a certain place, in order that he may be murdered, and he is murdered accordingly, that would constitute such person an accessory before the fact to the murder. *Reg. v. Manning*, 2 C. & K. 903.

It is not essential that there should have been any direct communication between an accessory before the fact and the principal felon. It is enough if the accessory directs an intermediate agent to procure another to commit a felony; and it will be sufficient even if the accessory does not name the person to be procured, but merely directs the agent to employ some person. *Rea v. Cooper*, 5 C. & P. 535.

The prisoner had procured certain drugs and gave them to his wife, with intent that she should take them in order to procure abortion. She took them in his absence and died from their effects. On an indictment against him for manslaughter, it was objected that he was only an accessory before the fact, and that in law there cannot be an accessory before the fact to manslaughter:—Held, that he was properly found guilty of manslaughter. *Reg. v. Gaylor*, 7 Cox, C. C. 253; Dears. & B. C. C. 288.

Two men, having quarrelled, agreed to fight with their fists, and to bind themselves to fight;

each put down 1l., so that 2l. might be paid to the winner. The prisoner consented to hold the 2l. and pay it over to the winner. Otherwise he had nothing to do with the fight, and he was not present at it. There was no reason to suppose that the life of either man would be endangered. The men fought, and one of them received injuries of which he afterwards died. The prisoner having been informed who was the winner, but not knowing of the other man's danger, paid over the 2l. to the winner:—Held, that the prisoner was not an accessory before the fact to the manslaughter of the man killed. *Reg. v. Taylor*, 2 L. R., C. C. 147; 44 L. J., M. C. 67; 32 L. T. 409; 23 W. R. 616.

—Effect of 24 & 25 Vict. c. 94, s. 2.]—The 2nd section of 24 & 25 Vict. c. 94, only applies where the accessory might at common law have been indicted with or after the conviction of the principal. A person therefore cannot be tried for inciting another to commit suicide, although that other commits suicide. *Reg. v. Russell*, 1 M. C. C. 356; *S. P.*, *Reg. v. Liddington*, 9 C. & P. 79.

After the Fact.—By 24 & 25 Vict. c. 94, s. 3, *whosoever shall become an accessory after the fact to any felony, whether the same be a felony at common law or by virtue of any act passed or to be passed, may be indicted and convicted either as an accessory after the fact to the principal felony, together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, and may thereupon be punished in like manner as any accessory after the fact to the same felony, if convicted as an accessory, may be punished.* (Former provision, 11 & 12 Vict. c. 46; s. 2.)

By s. 4, *every accessory after the fact to any felony (except where it is otherwise specially enacted), whether the same be a felony at common law or by virtue of any act passed or to be passed, shall be liable, at the discretion of the court, to be imprisoned in the common gaol or house of correction for any term not exceeding two years, with or without hard labour, and it shall be lawful for the court, if it shall think fit, to require the offender to enter into his own recognizances and to find sureties, both or either, for keeping the peace, in addition to such punishment; provided that no person shall be imprisoned under this clause, for not finding sureties, for any period exceeding one year.*

In what Cases.—H. & S. broke open a warehouse, and stole thereout thirteen firkins of butter, which they carried along the street thirty yards; they then fetched the prisoner, who was apprised of the robbery, and he assisted in carrying away the property; he was indicted for theft:—Held, that he was only an accessory, and not a principal. *Rea v. King*, R. & R. C. C. 332.

Where three persons agreed to utter a forged note, and one uttered it at Gosport, and the other two, by previous concert, waited at Portsmouth, they were held to be accessories. *Rea v. Soares*, 2 East, P. C. 974; R. & R. C. C. 25.

Several persons were tried upon one indictment, some as principals in murder, others as

accessories after the fact. The principals were convicted of manslaughter:—Held, that those charged as accessories might rightly be convicted as accessories to manslaughter. *Reg. v. Richards*, 2 Q. B. D. 311; 46 L. J., M. C. 200; 36 L. T. 377.

A. & B. were in partnership, and B., in fraud of the partnership disposed of the goods of the firm to the prisoner, who knowingly received the same. Semble, that the prisoner might have been indicted and convicted as an accessory to or after the fact to the felony, either at common law or under 24 & 25 Vict. c. 94, ss. 1, 3. *Reg. v. Smith*, 1 L. R., C. C. 266; 39 L. J., M. C. 112; 18 W. R. 932.

A. was indicted for the wilful murder of B., and C. was indicted for receiving, harbouring, and assisting A., well knowing that he had committed the felony and murder aforesaid:—Held, that if the offence of A. was reduced to manslaughter, C. might, notwithstanding, be found guilty, as accessory after the fact. *Rev. v. Greenacre*, 8 C. & P. 35.

Where a person is charged as accessory after the fact to a murder, the question for the jury is, whether such person, knowing the offence had been committed, was either assisting the murderer to conceal the death, or in any way enabling him to evade the pursuit of justice. *Id.*

To substantiate the charge of harbouring a felon, it must be shewn that the party charged did some act to assist the felon personally. *Reg. v. Chapple*, 9 C. & P. 355.

Upon an indictment against a party as an accessory after the fact in robbery, proof of the prisoner's knowledge of the felony, together with proof of his aiding the principal in disposing of the fruits of the robbery, is sufficient evidence of comforting and assisting, to support the indictment. *Reg. v. Butterfield*, 1 Cox, C. C. 39.

A prisoner who employed another person to harbour the principal felons may be convicted as accessory after the fact, though he himself did no act of relieving, and the prisoner may be found guilty on the uncorroborated testimony of the person who actually harboured. *Rev. v. Jarvis*, 2 M. & Rob. 40.

A., a lad who was a clerk in a banking-house, robbed his employers; after doing so, he went to the lodgings of B., who was much older than himself, and who had relations in America. A. stayed twenty minutes at B.'s lodgings; and after that, on the same night, A. and B. started together by the coach, and went from Reading to Liverpool, intending to embark for America:—Held, that B. might be convicted as an accessory after the fact, in harbouring, receiving, and maintaining A., the principal felon. *Rev. v. Lee*, 6 C. & P. 536.

Although a statute which creates a new felony will attach to that felony all the common-law incidents to felony, so that accessories thereto will be included, yet it will go no further. *Rev. v. Sadi*, 1 Leach, C. C. 468; 2 East, P. C. 748.

A person is not to be convicted of larceny if it be doubtful whether he is an accessory before or after the fact. *Reg. v. Munday*, 2 F. & F. 170.

3. PRACTICE RELATING THERETO.

Grand Jury—Different Findings.—If a charge against an accessory is, that the principal felony was committed by persons unknown, it is no

objection that the same grand jury has found a bill imputing the principal felony to J. S. *Rev. v. Bush*, R. & R. C. 372.

Trial.—Where a principal and an accessory are indicted together, they will not be allowed to sever in their challenges so as to be tried separately. *Reg. v. Fisher*, 3 Cox, C. C. 68.

An accessory after the fact indicted in the ordinary way with the principal felon, may, since 11 & 12 Vict. c. 46, s. 2, be tried before the principal. *Reg. v. Hansell*, 3 Cox, C. C. 597.

The act of aiding and assisting being a felony by 4 Geo. 4, c. 64, s. 43, the defendant might be indicted before the principal had been tried; and the prosecution need not be instituted within one year after the offence committed, as required by 16 Geo. 2, c. 31, s. 4. *Reg. v. Holloway*, 15 Jur. 825; *S. C.*, nom. *Holloway v. Reg.* (in error), 2 Den., C. C. 287; 17 Q. B. 319.

If two are indicted for jointly making a corrupt contract with a third person for the procuring an East India cadetship, one may be convicted, though the other is acquitted. *Rev. v. Tuggart*, 1 C. & P. 201.

Indictment—Form of.—In indicting a person for felony, since 11 & 12 Vict. c. 46, it is immaterial whether he is a principal in the first or the second degree, or an accessory before the fact, as in either case he is indictable as a principal. *Reg. v. Manning*, 2 C. & K. 903.

An accessory after the fact to a felony cannot be convicted upon an indictment charging the commission of the felony only; he should be indicted as an accessory after the fact. *Reg. v. Fallon*, 9 Cox, C. C. 242; L. & C. 217; 32 L. J., M. C. 66; 8 Jur., N. S. 1217; 7 L. T. 471; 11 W. R. 74.

An indictment in two counts charged A. and B. jointly with stealing. A third count charged A. alone with receiving the stolen goods. At the trial no evidence was offered against B., and he was acquitted, in order that he might be called as a witness against A. A. was an accessory before the fact to the stealing by B., and he afterwards received the stolen goods. The jury returned a verdict of guilty against A., which was entered upon all the counts:—Held, that he was not entitled to an acquittal upon the first two counts by reason of the principal, B., having been acquitted, the 11 & 12 Vict. c. 46, s. 1, having made the crime of being an accessory before the fact a substantive felony. *Reg. v. Hughes*, Bell, C. C. 242; 8 Cox, C. C. 278; 29 L. J., M. C. 71; 6 Jur., N. S. 177; 1 L. T. 450; 8 W. R. 195.

Held, also, that there was no inconsistency in the verdict found by the jury, and entered upon all the counts, and therefore the conviction could be supported. *Id.*

Three persons were charged with a larceny, and two others as accessories in separately receiving portions of the stolen goods. The indictment also contained two other counts, one of them charging each of the receivers separately with a substantive felony, in separately receiving a portion of the stolen goods. The principals were acquitted:—Held, that the receivers might be convicted on the two last counts of the indictment. *Reg. v. Putham*, 9 C. & P. 280.

Indicting a servant to steal any silk that may be in the servant's care, without further defining the particular silk to be stolen, is sufficiently

certain to support a conviction. *Reg. v. Quail*, 4 F. & F. 1076.

If two persons are indicted for murder, the one as a principal in the first degree, and the other as being present, aiding and assisting to commit it, the jury may find the principal in the first degree not guilty, and convict the principal in the second degree. *Reg. v. Taylor*, 1 Leach, C. C. 360; *S. C.*, nom. *Shaw's case*, 1 East, P. C. 351.

An indictment stated that a certain evil-disposed person stole certain goods; that L. C. incited him to do so; that E. C. did the same; that E. M. received a portion of the property, knowing it to have been stolen; it also charged A. and the before-mentioned E. C. as receivers. All these persons having been found guilty, the conviction was held good against all except L. C., who was merely charged as accessory before the fact, and judgment was given as to the charges of receiving only. *Reg. v. Caspar*, 9 C. & P. 289; 2 M. C. C. 101.

A count charged A. with the murder of B., and also C. and D. with being present, aiding and abetting A. in the commission of the murder. A. was an insane person:—Held, therefore, that C. and D. could not be convicted on this count. *Reg. v. Tyler*, 8 C. & P. 616.

—**Joinder of Counts.**—A count charging a person with being accessory before the fact, may be joined with a count charging him with being accessory after the fact to the same felony, and the prosecutor cannot be required to elect upon which he will proceed, as the party may be found guilty upon both. *Reg. v. Blackson*, 8 C. & P. 43.

Evidence.—A person indicted as an accessory before the fact cannot be convicted of that charge upon evidence proving him to have been present, aiding and abetting. *Reg. v. Gordon*, 1 Leach, C. C. 515; 1 East, P. C. 352.

An indictment against an accessory to a felony, committed by a person unknown, cannot be supported, if it appears that the principal felon acknowledged his guilt before the grand jury. *Reg. v. Walker*, 3 Camp. 264.

An accessory may controvert the guilt of the principal, notwithstanding the record of his conviction. *Reg. v. Smith*, 1 Leach, C. C. 288.

An averment of the conviction of the principal is supported by the production of the record, however erroneous the judgment may be. *Reg. v. Baldwin*, 3 Camp. 265.

On an indictment against an accessory, a confession by the principal is not admissible in evidence to prove the guilt of the principal. *Reg. v. Turner*, 1 M. C. C. 347.

It must be proved alunde, especially if the principal is alive. *Id.*

—**Sufficiency of.**—Proof that a man occasionally visited coiners; that the rattling of money was occasionally heard with them; that he was seen counting something, as if it was money, when he left them; that on coming to their lodgings just after the apprehension he endeavoured to escape, and was found to have had money about him; is not sufficient evidence to implicate him as counselling, procuring, aiding, and abetting the coiners. *Reg. v. Isaacs*, 1 Russ. C. & M. 63.

A statement by a prisoner that A. had proposed to him to murder B. on the following

night, and that he (the prisoner) agreed to go, but did not do so, is not of itself evidence that the prisoner was accessory before the fact to the murder of B. by A. on that night. *Reg. v. Telford*, 6 Cox, C. C. 333.

Evidence that A. was privy to a plot to murder B. by explosive machines, is sufficient to go to the jury on counts charging A. with the murder of C. (accidentally killed by the explosion)—with conspiring to murder him, and as an accessory to the fact. *Reg. v. Bernard*, 1 F. & F. 240.

B. OFFENCES.

I. ABDUCTION OF WOMEN AND CHILDREN.

1. *What is.*
2. *Indictment*, 46.
3. *Evidence*, 46.

1. WHAT IS.

Of Women.—From Motives of Lucre.—By 24 & 25 Vict. c. 100, s. 53, *where any woman of any age shall have any interest, whether legal or equitable, present or future, absolute, conditional or contingent, in any real or personal estate, or shall be a presumptive heiress or co-heiress, or presumptive next of kin, or one of the presumptive next of kin, to any one having such interest, whosoever shall, from motives of lucre, take away or detain such woman against her will, with intent to marry or carnally know her, or to cause her to be married or carnally known by any other person, etc.*

On an indictment for abduction on 9 Geo. 4, c. 31, s. 19, the jury ought not to convict the prisoner, unless satisfied that he committed the offence from motives of lucre; but evidence of expressions used by him respecting the property of the lady, such as his stating that he had seen the will of one of her relatives (naming him), and that she would have 220*l.* a year, are important for the consideration of the jury, in coming to a conclusion whether he was actuated by motives of lucre or not. *Reg. v. Barratt*, 9 C. & P. 387.

Of Girls.—Unmarried Girl under Sixteen.—By 24 & 25 Vict. c. 100, s. 55, *whosoever shall unlawfully take or cause to be taken any unmarried girl, being under the age of sixteen years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her, shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour, (Similar to 9 Geo. 4, c. 31, s. 20.)*

—**Taking out of Possession.—What is.**—It is not necessary to shew a trespass, or anything of that nature, in the taking, other than the act of taking. *Reg. v. Fraser*, 8 Cox, C. C. 446.

A., a girl under sixteen, who was in service, was, as she was returning from an errand, asked by B. if she would go to London, as B.'s mother wanted a servant, and would give her 5*l.* wages. A. and B. went away together to Bilston, where both were found, and B. apprehended:—Held, that this was not such a taking, or causing to be taken, of A. as was sufficient to constitute the

offence of abduction under 9 Geo. 4, c. 31, s. 20. *Reg. v. Meadows*, 1 C. & K. 399; *Dears. C. C.* 161, n.

A girl under sixteen having by persuasion been induced by the prisoner to leave her father's house, and go away with him without the consent of the father, left her home alone by a preconcerted arrangement between them, and went to a place appointed, where she was met by the prisoner, and then they went away together some distance, without the intention of returning:—Held, first, that there was a taking of the girl out of the father's possession, within 9 Geo. 4, c. 31, s. 20, by the prisoner when he met the girl, and went away with her at the appointed place, as up to that moment she had not absolutely renounced her father's protection. *Reg. v. Mankletow* or *Manktelow*, *Dears. C. C.* 159; 6 Cox, C. C. 143; 22 L. J., M. C. 115; 17 Jur. 352.

Held, secondly, such taking need not be by force, actual or constructive, and it is immaterial whether the girl consents or not. *Id.*

The case of *Reg. v. Meadows* (*supra*) explained. *Id.*

A. went in the night to the house of B., and placed a ladder against a window, and held it for J., the daughter of B., to descend, which she did, and then eloped with A. J. was a girl under sixteen, viz. fifteen years old:—Held, that this was a taking of J. out of the possession of her father within 9 Geo. 4, c. 31, s. 20, although J. had herself proposed to A. to bring the ladder, and to elope with him. *Reg. v. Robins*, 1 C. & K. 456.

A girl, under sixteen, who was living in her father's house, was induced by the prisoner to go to a chapel and to be married to him. She was only away from her home for an hour or two, and after her return continued to live with her father as before, he being ignorant of what had taken place. The marriage was never consummated:—Held, that there was sufficient evidence of her having been taken out of her father's possession to satisfy 9 Geo. 4, c. 31, s. 20. *Reg. v. Baillie*, 8 Cox, C. C. 238.

In order to constitute an offence within 9 Geo. 4, c. 31, s. 20, it is sufficient, if, by moral force, a willingness on the part of the girl to go away with the prisoner is created; but if her going away with him is entirely voluntary, no offence is committed. *Reg. v. Handley*, 1 F. & F. 648.

It was no answer to an indictment under 9 Geo. 4, c. 31, s. 20, for taking away a girl under the age of sixteen years, to shew that the girl alleged to be abducted went voluntarily from her home in consequence of the persuasion of the prisoner, to a place at some distance, where she met the prisoner, and whence she went away with him without any reluctance. *Reg. v. Kipps*, 4 Cox, C. C. 167.

On an indictment for taking an unmarried girl under the age of sixteen from the possession of her father:—Held, that the statute was satisfied, though the man and the girl quitted the house together in consequence of a proposition which emanated from the girl herself to that effect, and a statement by her to the man that she intended to leave her father's house. *Reg. v. Biswell*, 2 Cox, C. C. 279.

A. was indicted under 24 & 25 Vict. c. 100, s. 53, for fraudulently alluring C. out of the possession of her mother and stepfather, the latter

having the lawful care of her; and B. with being an accessory before the fact. C. was sent by her mother to live with her grandmother. Instead of going there, she went to B.'s house, and did not return home when desired to do so by her mother. After remaining with B. a month, she left with A., her paternal uncle, and was married to him without her mother's knowledge:—Held, upon objection that there was no evidence that the alluring was fraudulent, or that the girl was taken out of her mother's possession, that the facts did not support the indictment. *Reg. v. Burrell*, L. & C. 354; 9 Cox, C. C. 368; 33 L. J., M. C. 54; 9 L. T. 426; 12 W. R. 149.

When a servant girl, under sixteen years of age, had permission from her master to go and see her parents from Sunday to Monday night, and went to see them on the Sunday for a few hours only, and then told them (by previous arrangement with the prisoner) that she was going back to her employment, instead of which she remained with him all night, and did not return to her master's employment until some days afterwards:—Held, that the facts would not warrant a conviction for abduction under 24 & 25 Vict. c. 100, s. 55. *Reg. v. Miller*, 13 Cox, C. C. 179.

If a man, by previous promises to a girl under sixteen as to what he will do if she will leave her parents' house and go to live with him, induces her at length to do so, and then receives and harbours her secretly, he is liable to be convicted for taking her out of the possession of her parents, even although he does not meet her by any previous arrangement and is not otherwise actually a party to her act in leaving. *Reg. v. Robb*, 4 F. & F. 59.

— **Taking not Intended to be Permanent.**—A. was convicted for taking an unmarried girl, under sixteen, out of the possession of her father, and against his will. It was proved that A. (who had previously stayed out with the girl for a night), having met her by arrangement, stayed with her away from her father's house for three days, sleeping with her at night; that he took her away without her father's consent, and against his will, in order to gratify his passions and then allow her to return home, and not with a view of keeping her away from her home permanently:—Held, that the evidence justified the conviction. *Reg. v. Timmins*, Bell, C. C. 276; 8 Cox, C. C. 401; 30 L. J., M. C. 45; 6 Jur., N. S. 1309; 3 L. T. 337; 9 W. R. 36.

— **Disapproval of Act of Girl.**—A man is not bound to return to her father's custody a girl who, without any inducement on his part, has left her home, and has come to him; but if, at any time, he has attempted to induce her to leave home without her parents' consent, and she afterwards does so, he is guilty of the abduction of the girl, even though he disapproves of the act at the particular time at which she gives effect to his previous persuasions. *Reg. v. Oliver*, 10 Cox, C. C. 402.

— **Improper Motive—Question for Jury.**—Where a person was indicted for the abduction of a girl under sixteen, and it did not appear that he had any improper motive, the jury was directed that if they thought he merely wished to have the child to live with him, and honestly believed that he had a right to

the custody of the child, although he had no such right, they ought to acquit him. *Reg. v. Tinkler*, 1 F. & F. 513. See *Reg. v. Booth*, *infra*.

When a girl, under sixteen, has been found in the streets by herself and seduced away, that is not a taking out of the possession of the father, even though he is living in the place and she lives with him. *Reg. v. Green*, 3 F. & F. 274.

The prisoner met a girl under sixteen years of age in a street, and induced her to go with him to a place at some distance, where he seduced her, and detained her for some hours. He then took her back to the street where he had met her, and she returned home to her father's.—Held, in the absence of any evidence that the prisoner knew or had reason for knowing, or that he believed that the girl was under the care of her father at the time, that a conviction under 24 & 25 Vict. c. 100, s. 55, could not be sustained. *Reg. v. Hibbert*, 1 L. R., C. C. 184; 38 L. J., M. C. 61; 19 L. T. 799; 17 W. R. 384; 11 Cox, C. C. 246.

—Prisoner's Knowledge as to Age of Girl.]

—To support an indictment for the abduction of an unmarried girl under sixteen, it is not necessary to prove that the person who abducted her knew her to be under sixteen, as the person who does so is bound to ascertain her age, and if she turns out to be under sixteen, he must take the consequences. *Reg. v. Mycock*, 12 Cox, C. C. 28.

One who takes an unmarried girl under the age of sixteen out of the possession and against the will of her father or mother, is guilty of an offence under 24 & 25 Vict. c. 100, s. 55, although he may not have had any bad motive in taking her away, nor means of ascertaining her age, and although she was willing to go. *Reg. v. Booth*, 12 Cox, C. C. 321.

A man was convicted under 24 & 25 Vict. c. 100, s. 55, of unlawfully taking an unmarried girl, under the age of sixteen, out of the possession and against the will of her father. It was proved that he did take the girl, and that she was under sixteen; but that he bona fide believed and had reasonable ground for believing that she was over sixteen.—Held, that the latter fact afforded no defence, and that he was rightly convicted. *Reg. v. Prince*, 2 L. R., C. C. 154; 44 L. J., M. C. 122; 32 L. T. 700; 24 W. R. 76; 13 Cox, C. C. 138.

A man dealing with an unmarried girl does so at his peril; and if she turns out to be under sixteen, is liable to be indicted for unlawfully taking her away. *Reg. v. Oliver*, 10 Cox, C. C. 402.

It is no defence that the prisoner did not know that an unmarried girl was under sixteen, or that, from her appearance, he might have thought she was a greater age. *Reg. v. Robins*, 1 C. & K. 456.

—Taking against Will of Parents—Fraud.]

—Semble, that where a man by false and fraudulent representations induced the parents of a girl between ten and eleven years of age to allow him to take her away, such taking away of the girl was an abduction within 9 Geo. 4, c. 31, s. 20. *Reg. v. Hopkins*, Car. & M. 254.

On an indictment for unlawfully taking away a girl against the will of her parents, if they have encouraged her in a lax course of life, the case does not come within 9 Geo. 4, c. 31, s. 90, as it

cannot be said to be against their will. *Reg. v. Primett*, 1 F. & F. 50.

—Who has Lawful Charge of Girl.]—A servant under sixteen years of age had permission from her master to go and see her parents from Sunday to Monday night, and went to see them on Sunday for a few hours only; she then told them (by previous arrangement with the prisoner) that she was going back to her employment, but instead of doing so, she remained with the prisoner all night and did not return to her master until some days afterwards.—Held, that the girl was under the lawful charge of her master, and not of her father at the time of the alleged offence. *Reg. v. Miller*, 13 Cox, C. C. 179.

A girl who is away from her home, is still in the custody or possession of her father, if she intends to return to her home. *Reg. v. Mycock*, 12 Cox, C. C. 28.

2. INDICTMENT.

Averment as to Possession.]—A. was indicted under 24 & 25 Vict. c. 100, s. 53, for fraudulently alluring C. out of the possession of her mother and stepfather, the latter having the lawful care of her.—Held, that the averments that the girl was in the possession and under the care of her stepfather might be rejected as surplusage. *Reg. v. Burrell*, 9 Cox, C. C. 368; L. & C. 354; 33 L. J., M. C. 54; 9 L. T. 426; 12 W. R. 149.

3. EVIDENCE.

Wife a Competent Witness.]—The wife is a witness as well for as against her husband, although she has cohabited with him from the day of the marriage. *Reg. v. Perry*, 1 Russ. C. & M. 949; 1 East, P. C. 454.

Where several defendants were indicted for a misdemeanor in conspiring to carry away a young lady, under the age of sixteen, from the custody appointed by her father, and to cause her to marry one of the defendants; and, in another, for conspiring to take her away by force, being an heiress, and to marry her to one of the defendants.—Held, that, assuming the young lady to be at the time the lawful wife of one of the defendants, she was a competent witness for the prosecution, although there was no evidence to support that part of the indictment which charged force. *Reg. v. Wakefield*, 2 Lewin, C. C. 279.

What Admissible.]—A prisoner was taken into custody at the house of his brother on a charge of abduction; when he was taken, a letter was found in a writing-desk in the room in which he and his brother were. The letter was directed to a person in the neighbourhood of the prisoner's late residence. The police-officer was going to open it, when the prisoner told him it had nothing to do with the business that he had come about.—Held, that the letter was receivable in evidence on the trial of the prisoner for the abduction. *Reg. v. Barratt*, 9 C. & P. 387.

What must be Proved.]—On a prosecution on 3 Hen. 7, c. 2, it was essential that there should be a continuance of the force into the county where the defilement took place. *Reg. v. Gordon*, 1 Russ. C. & M. 943.

II. ABORTION, PROCUREMENT OF.

See *post*, MURDER AND OFFENCES AGAINST THE PERSON.

III. ADULTERATION OF FOOD AND DRINK.

See HEALTH—Fisher's "Digest."

IV. ARSON AND BURNING.

1. *Generally*.
2. *Dwelling-houses with Persons therein*, 48.
3. *Houses or Buildings*, 48.
4. *Goods, &c., in Buildings*, 51.
5. *By Gunpowder and Explosive Substances*, 52.
6. *Crops, Woods, or Stacks*, 53.
7. *Indictment*, 55.
8. *Evidence*, 58.

I. GENERALLY.

Statute.—24 & 25 Vict. c. 97 consolidates and amends the statute law in relation to this offence.

Who may Commit.—One put by overseers of the poor into a house to live there is merely a servant, and his possession is theirs, and therefore he may commit arson by burning it. *Reg. v. Gowan*, 2 East, P. C. 1027; 1 Leach, C. C. 246.

One entitled to dower only out of a house, which was leased to another, may commit arson by burning it. *Reg. v. Harris*, 2 East, P. C. 1023.

The Offence.—Burning a man's own house contiguous to others is a misdemeanor at common law. *Reg. v. Probert*, 2 East, P. C. 1030; *S. P.*, *Reg. v. Isaac*, 2 East, P. C. 1031.

A sailor on board ship entered the spirit room and stole rum, and, while doing so, a lighted match held in his hand came into contact with the inflammable liquor, whence a conflagration ensued which destroyed the ship:—Held, that he was not rightly convicted of arson. *Reg. v. Faulkner*, 11 Ir. R., C. L. 8; 13 Cox, C. C. 550.

The feloniously burning a dwelling-house is arson at common law; but the burning of an out-house is a statutable felony. *Reg. v. Nash*, 2 East, P. C. 1021.

What is a Burning.—A small faggot was set on fire on the boarded floor of a room, and the faggot was nearly consumed; the boards of the floor were scorched black, but not burnt, and no part of the wood of the floor was consumed:—Held, not a sufficient burning to support an indictment for arson. *Reg. v. Russell*, Car. & M. 541.

If a person sets fire to a stack, the fire from which is likely to and does communicate to a barn, which is thereby burnt, the person is indictable for burning the barn. *Reg. v. Cooper*, 5 C. & P. 535.

To constitute a setting on fire it is not necessary that any flame should be visible. *Reg. v. Stallion*, 1 M. C. C. 398.

It was proved that the floor near the hearth was scorched. It was charred in a trifling way. It had been at a red heat, but not in a blaze:—Held, that this would be a sufficient burning to support

an indictment for arson. *Reg. v. Parker*, 9 C. & P. 45.

Setting fire to paper only in a drying loft belonging to a paper-mill, no part of which was burnt, was not setting fire to an out-house, within 9 Geo. 1, c. 22. *Reg. v. Taylor*, 1 Leach, C. C. 49; 2 East, P. C. 1820.

2. DWELLING-HOUSES WITH PERSONS THEREIN.

Statute.—By 24 & 25 Vict. c. 97, s. 2, *whosoever shall unlawfully and maliciously set fire to any dwelling-house, any person being therein, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47); or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under sixteen, with or without whipping. (Previous enactment, 7 Will. 4 & 1 Vict. c. 89, s. 3, and was a capital offence by s. 2.)*

Person being therein.—A. was indicted on this statute for the capital offence of setting fire to B.'s dwelling-house, B. being therein. A. had set fire to an out-house under the same roof as the dwelling-house, and the fire communicated to the dwelling-house and burnt it. At the time that A. set fire to the out-house, B. was in the dwelling-house, but had left it before the fire reached the dwelling-house:—Held, that the capital charge could not be sustained, as B. was not in the house at the time it was on fire. *Reg. v. Fletcher*, 2 C. & K. 215.

Dwelling-house.—The house set fire to must be a dwelling-house, and a common gaol occupied by none but prisoners is not a dwelling-house for this purpose. *Reg. v. Connor*, 2 Cox, C. C. 65.

Finding Guilty on another Section.—On an indictment on 7 Will. 4 & 1 Vict. c. 89, s. 2, for the capital offence of setting fire to a dwelling-house, some person being therein (the indictment not charging any intent to injure or defraud any person), the prisoner could be convicted of the transportable offence of setting fire to the house, under s. 3; as an allegation of an intent to injure or defraud some person was essential to an indictment under that section. *Reg. v. Paice*, 1 C. & K. 73; *S. P.*, *Reg. v. Fletcher*, 2 C. & K. 215.

3. HOUSES OR BUILDINGS.

Statute.—By 24 & 25 Vict. c. 97, s. 3, *whosoever shall unlawfully and maliciously set fire to any house, stable, coach-house, out-house, warehouse, office, shop, mill, malthouse, hop-oast, barn, storehouse, granary, hovel, shed, or fold, or to any farm building, or to any building or erection used in farming land, or in carrying on any trade or manufacture, or any branch thereof, whether the same shall then be in the possession of the offender or in the possession of any other person, with intent thereby to injure or defraud any person, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47); or to be imprisoned for any term not ex-*

ceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping. (Former provisions, 7 Will. 4 & 1 Vict. c. 89, s. 3, and 7 & 8 Vict. c. 62, s. 1.)

Section 4 applies to railway stations and buildings, and s. 5 to public buildings.

By 24 & 25 Vict. c. 97, s. 6, *whosoever shall unlawfully and maliciously set fire to any building other than such as are in this act before mentioned shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years, and not less than five years (27 & 28 Vict. c. 47); or to be imprisoned for any term not exceeding two years, with or without hard labour, and, if a male under sixteen, with or without whipping.*

House, What is.]—An unfurnished structure intended to be used as a house, is not a house within the meaning of the 24 & 25 Vict. c. 97, s. 13. *Reg. v. Edgell*, 11 Cox, C. C. 132.

A building erected not for habitation, but for workmen to take their meals, and dry their clothes in, which has four walls, a roof, a door, but no window, but in which a person slept with the knowledge, but without the permission, of the owner, was not a house, the setting fire to which was felony, within 7 Will. 4 & 1 Vict. c. 89, s. 3. *Reg. v. England*, 1 C. & K. 533.

A building which never had been inhabited, but was constructed as and intended for a dwelling-house, though only containing straw, boards and implements of husbandry, was not a house within 9 Geo. 4, c. 22, s. 7. *Elsmore v. St. Briavels*, 2 M. & R. 514; 8 B. & C. 461.

A common gaol was a house within 9 Geo. 1, c. 22. *Reg. v. Donnevan*, 2 W. Bl. 682; 1 Leach, C. C. 69; 2 East, P. C. 1021. But see now *Reg. v. Connor*, 2 Cox, C. C. 65, *supra*.

Stable—What is.]—Burning a stable is not supported by proof of burning a shed, which has been built for and used as a stable originally, but has latterly been used as a lumber shed only. *Reg. v. Colley*, 2 M. & Rob. 475.

A. was charged with setting fire to a stable: it was proved that some haulm had been carted from a field and stacked in a building originally intended for a stable, but it was afterwards divided into three parts by a wall, which reached only to the eaves. One part was used as a stable, but that part was not the part fired:—Held, that the building was improperly described as a stable. *Reg. v. Munson*, 2 Cox, C. C. 186.

The prosecutor had built a place for an oven to bake bricks, but it was afterwards roofed and a door put to it. In this a cow was kept; adjoining to it but not under the same roof was a lean-to in which a horse was kept:—Held, that the building was not a stable and that if a person set fire to it (the lean-to not being burnt), he was not indictable for arson to a stable. *Reg. v. Haughton*, 5 C. & P. 555.

Out-house—What is.]—A. was indicted for setting fire to an out-house. The building set on fire was a thatched pigsty, situate in a yard in the possession of the prosecutor, into which yard the back door of his house opened, and which yard was bounded by fences and by other buildings of the prosecutor, and by a cottage and barn, which

were let by him to a tenant, but which did not open into this yard:—Held, that the pigsty was an out-house within 7 Will. 4 & 1 Vict. c. 89, s. 3. *Reg. v. Jones or James*, 1 C. & K. 303; 2 M. C. C. 308.

A building separated from the house by a passage, used as a school-room, but within the curtilage, was an out-house within 9 Geo. 1, c. 22, s. 1, although not of the ordinary description of outhouses. *Reg. v. Winter*, R. & R. C. C. 295.

A cart hovel, consisting of a stubble roof supported by uprights, in a field at a distance from other buildings, was not an out-house within 7 & 8 Geo. 4, c. 30, s. 2. *Reg. v. Parrott*, 6 C. & P. 402.

A building had been built for an oven to bake bricks, but afterwards was roofed and a door put to it. In this place the prosecutor kept a cow; neither the prosecutor, nor the person of whom he rented this building, had any house or farm-yard near it, nor did any wall connect it with any dwelling-house; the nearest dwelling being one hundred yards off, and not belonging to either the prosecutor or his landlord:—Held, that the building was not an out-house, and that, if a person set it on fire he was not indictable for arson. *Reg. v. Haughton*, 5 C. & P. 555.

An open building in a field at a distance from and out of sight of the owner's house, though boarded round and covered in, was not an out-house within 7 & 8 Geo. 4, c. 30, s. 2. *Reg. v. Ellison*, 1 M. C. C. 336.

An open shed in a farm-yard, composed of upright posts supporting pieces of wood laid across them, and covered with straw as a roof, was an out-house, within 7 & 8 Geo. 4, c. 30, s. 2. *Reg. v. Stallion*, 1 M. C. C. 398.

A building which had never been inhabited, but which was constructed as and intended for a dwelling-house, although it only contained straw, boards, and agricultural implements, was not an out-house within 9 Geo. 4, c. 22, s. 7. *Elsmore v. St. Briavels*, 2 M. & R. 514; 8 B. & C. 461.

A. was indicted for arson of an out-house; it was proved that some haulm had been carted from a field and stacked in a building originally intended for a stable but which was afterwards divided into three parts by a wall. The fire was kindled in a part containing the haulm and a quantity of files of the prosecutor, who was a builder:—Held, that the building was improperly described as an out-house. *Reg. v. Munson*, 2 Cox, C. C. 186.

Barn—What is.]—A building which never had been inhabited, but which was constructed as and intended for a dwelling-house, but which contained straw, boards, and implements of husbandry, was not a barn within 9 Geo. 4, c. 22, s. 7. *Elsmore v. St. Briavels*, 2 M. & R. 514; 8 B. & C. 461.

Shed—Building for carrying on Trade.]—A. was indicted for having set fire to a building twenty-four feet square, the sides of which were composed of wood, with glass windows; it was roofed, and was used by a gentleman, who built houses on his own property for the purpose of disposing of them, as a storehouse for seasoned timber, as a place of deposit for tools, and as a place where timber was prepared for use:—Held, that this was a shed, and also an erection used in carrying on trade. *Reg. v. Amos*, T. & M.

423; 2 Den. C. C. 55; 5 Cox, C. C. 222; 20 L. J., M. C. 103; 15 Jur. 90.

A first count charged the firing of a certain building used by O. for carrying on his trade as a builder; and other counts laid the arson as of a stable, an out-house, and a stack of haulm. It was proved that some haulm had been carted from a field and stacked in a building originally intended for a stable, but afterwards divided into three parts by a wall, which reached only to the eaves. One part was used as a stable, and the part fired contained the haulm and a lot of tiles of the prosecutor, who was a builder. The fire had been kindled on the haulm:—Held, that the building was improperly described as a shed. *Reg. v. Munson*, 2 Cox, C. C. 186.

Held, further, that it was a building used by the prosecutor in carrying on his trade. *Ib.*

Building—What is.]—An unfinished house, brick built, of which all the walls external and internal were built and finished, the roof on and finished, the flooring of a considerable part laid, and the internal walls and ceilings prepared for plastering, is a building within 24 & 25 Vict. c. 97, s. 6, the setting fire to which is a felony. *Reg. v. Manning*, 1 L. R., C. C. 338; 41 L. J., M. C. 11; 25 L. T. 573; 20 W. R. 102; 12 Cox, C. C. 106.

4. GOODS, &C., IN BUILDINGS.

Statute.]—By 24 & 25 Vict. c. 97, s. 7, *whosoever shall unlawfully and maliciously set fire to any matter or thing, being in, against, or under any building, under such circumstances that if the building were thereby set fire to, the offence would amount to felony, shall be guilty of felony, and, being convicted thereof, shall be liable at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen and not less than five years (27 & 28 Vict. c. 47); or to be imprisoned for any term not exceeding two years, with or without hard labour, and, if a male under sixteen, with or without whipping. (Former provisions, 7 & 8 Vict. c. 62, s. 2, and 14 & 15 Vict. c. 19, s. 8.)*

The Offence.]—A person who maliciously set fire to his own goods in his own house with intent, by burning the goods, to defraud an insurance company, but did not set fire to the house, might be convicted of felony under an indictment framed upon 14 & 15 Vict. c. 19, s. 8, and 7 Will. 4 & 1 Vict. c. 89, s. 3. *Reg. v. Lyons*, Bell, C. C. 38; 8 Cox, C. C. 84; 28 L. J., M. C. 33; 5 Jur., N. S. 23; 32 L. T., O. S. 150; 7 W. R. 58.

No Intention to burn House.]—Wilfully throwing a light into a post-office letter-box in a house with the intention of burning the letters, but not the house, is not a felony within 24 & 25 Vict. c. 97, ss. 7, 8. *Reg. v. Batstone*, 10 Cox, C. C. 20.

A person maliciously set fire to goods in a house, with intent to injure the owner of the goods, but he had no malicious intention to burn the house or to injure the owner of it. The house did not take fire:—Held, that if the house had thereby caught fire, the setting fire to it would not have been within 24 & 25 Vict. c. 97, s. 7, as under the circumstances it would not have amounted to felony. *Reg. v. Child*, 1 L. R.,

C. C. 307; 40 L. J., M. C. 127; 24 L. T. 536; 19 W. R. 726; 12 Cox, C. C. 64.

The prisoner was indicted under 24 & 25 Vict. c. 97, s. 7, for wilfully and maliciously setting fire to a picture frame in a building under such circumstances as if the building were thereby set fire to, would amount to a felony. The jury found that the prisoner did not set fire to the house apart from the frame, that he did set fire to the frame, that the probable result would be setting fire to the floor of the house, that he did not intend to set fire to the house, that he was not aware that what he did would probably set the house on fire, and so injure the owner, and that he was not reckless or indifferent whether the house was set on fire or not. Upon these findings a verdict of not guilty was directed by the judge. *Reg. v. Harris*, 15 Cox, C. C. 75.

A servant girl entered on her service on the 2nd day of January, and on the 18th received notice to leave at the end of one month. On the 15th a sheet was discovered burning on a chair in front of, but four feet from, the kitchen fire. The girl was in the kitchen, and either could not or would not give any account of the occurrence. Later on in the same day the prisoner's apron was on fire, although it was hanging on the kitchen wall, ten feet away from the fire. At five P.M. on the same day there was a third fire, and at seven P.M. the bed and bedding in the nursery were on fire, the girl being there at the time. No part of the house was actually burnt:—Held, that upon the above facts the girl could not be indicted for the felony under 24 & 25 Vict. c. 97, s. 7, for setting fire to things in a building under such circumstances that if the building were thereby set fire to would amount to felony. *Reg. v. Nattrass*, 15 Cox, C. C. 73.

If a person maliciously, with intent to injure another by merely burning his goods, sets fire to such goods in his house, that does not amount to a felony under 24 & 25 Vict. c. 97, s. 7, even although the house catches fire, unless the circumstances are such as to shew that the person setting fire to the goods knew that by so doing he would probably cause the house also to take fire, and was reckless whether it did so or not; in which case there would be abundant evidence that he intended to bring about the probable consequence of his act, viz., the burning of the house. *Ib.*

5. BY GUNPOWDER AND EXPLOSIVE SUBSTANCES.

Damaging House—Persons being therein.]—By 24 & 25 Vict. c. 97, s. 9, *whosoever shall unlawfully and maliciously, by the explosion of gunpowder or other explosive substance, destroy, throw down, or damage the whole or any part of any dwelling-house, any person being therein, or of any building whereby the life of any person shall be endangered, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47); or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under sixteen, with or without whipping. (Precious provision, 9 & 10 Vict. c. 25, ss. 1, 2.)*

To what Cases Applying.]—This enactment was intended to apply to malicious injuries to

houses by throwing explosive substances against or into them, with intent to destroy them or injure the inmates, and not to cases of wanton mischief or assault. *Reg. v. Brown*, 3 F. & F. 821.

On an indictment under s. 9 of the 24 & 25 Vict. c. 97, for maliciously damaging a building by the explosion of dynamite, whereby the lives of certain persons were endangered:—Held, that the endangering of life, to be within the section, must result from the damage done to the building particularized in the indictment; but that the enactment does not contemplate the necessity of the persons endangered being inside the building, and would include the case of persons outside whose lives were imperilled by anything proceeding from the damaged building. *Reg. v. McGrath*, 14 Cox, C. C. 598.

Evidence.—Held, also, that for the purpose of proving such endangering of life, evidence of damage to other buildings that might be inhabited was not admissible, though such evidence would be admissible for the purpose of shewing the nature and character of the explosion, the extent of the damage, and its tendency to injure or destroy the particular buildings. *Id.*

— **Exposure to Risk.**—To endanger within s. 9, includes not only actual injury received by a person, but also exposure to risk or chance of injury, but it is for the jury in each case to say, from all the circumstances, whether or not the lives of persons were imperilled. *Id.*

Damaging Building.—By 24 & 25 Vict. c. 97, s. 10, *whosoever shall unlawfully and maliciously place or throw in, into, upon, under, against, or near any building any gunpowder or other explosive substance, with intent to destroy or damage any building, or any engine, machinery, working tools, fixtures, goods, or chattels, shall, whether or not any explosion take place, and whether or not any damage be caused, be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen, and not less than five years (27 & 28 Vict. c. 47); or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under sixteen, with or without whipping.* (Previous provision, 9 & 10 Vict. c. 25, s. 6.)

— **Gunpowder—In what Condition.**—In order to support an indictment under 24 & 25 Vict. c. 97, s. 10, for throwing gunpowder against a house with intent to damage, it is not enough to shew simply that gunpowder or other explosive substance was thrown against the house; but it must also be shewn that the substance was in a condition to explode at the time it was thrown, although no actual explosion should result. *Reg. v. Sheppard*, 11 Cox, C. C. 302; 19 L. T. 19.

6. CROPS, WOODS, OR STACKS.

Crops and Woods.—By 24 & 25 Vict. c. 97, s. 16, *whosoever shall unlawfully and maliciously set fire to any crop of hay, grass, corn, grain, or pulse, or of any cultivated vegetable produce, whether standing or cut down, or to any part of any wood, coppice, or plantation of trees, or to*

any heath, gorse, furze, or fern, wheresoever the same may be growing, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than five years (27 & 28 Vict. c. 47); or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under sixteen, with or without whipping. (Previous provision, 7 & 8 Geo. 4, c. 30, s. 17.)

A. and B. were charged with setting fire to a wood. They set fire to a summer-house which was in the wood, and from the summer-house the fire was communicated to the wood:—Held, that they might be convicted on this indictment. *Reg. v. Price*, 9 C. & P. 729.

Stacks.—By 24 & 25 Vict. c. 97, s. 17, *whosoever shall unlawfully and maliciously set fire to any stack of corn, grain, pulse, tares, hay, straw, haulm, stubble, or of any cultivated vegetable produce, or of furze, gorse, heath, fern, turf, peat, coals, charcoal, wood, or bark, or to any stack of wood or bark, shall be guilty of felony, and, being convicted thereof, shall be liable at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47); or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under sixteen, with or without whipping.* (Previous enactment, 7 Will. 4 & 1 Vict. c. 89, s. 10.)

— **What are.**—A. and B. were convicted for unlawfully and maliciously setting fire to a stack of grain. The stack was of the flax plant, with the seed or grain in it, and the jury found that the flax seed is a grain:—Held, that the stack was a stack of grain within 7 Will. 4 & 1 Vict. c. 89, s. 10. *Reg. v. Spencer*, Dears. & B. C. C. 131; 7 Cox, C. C. 189; 26 L. J., M. C. 16; 2 Jur., N. S. 1212.

An indictment for setting fire to a cock of hay cannot be sustained under a statute making it an offence to set fire to a stack of hay. *Reg. v. McKeever*, 5 Ir. R., C. L. 86.

A quantity of straw, packed on a lorry, in course of transmission to market, and left for the night in the yard of an inn, is not a stack of straw within the meaning of 24 & 25 Vict. c. 97, s. 17, and the setting fire thereto wilfully and maliciously is not felony. *Reg. v. Satchwell*, 2 L. R., C. C. 21; 42 L. J., M. C. 63; 28 L. T. 569; 21 W. R. 642.

A stack, of which the lower part consisted of cole-seed straw, and the upper part of wheat stubble, was not a stack of straw; and the setting it on fire was not therefore a capital offence within 7 & 8 Geo. 4, c. 29, s. 17. *Reg. v. Tottenham*, 7 C. & P. 237.

Setting fire to a score of faggots which were piled one upon another in a loft, which was made by means of a temporary floor put over an archway roofed in between two houses, and under which carts could go, was not setting fire to a stack of wood within 7 & 8 Geo. 4, c. 30, s. 17. *Reg. v. Aris*, 6 C. & P. 348.

A count charged an attempt to set fire to a stack of haulm. It was proved that some haulm had been carted from a field, and stacked in a building, originally intended for a stable, but

afterwards divided into three parts by a wall, which reached only to the eaves; one part was used as a stable, and the part fired contained the haulm and a lot of tiles:—Held, that the count was sufficient, inasmuch as it is not necessary to the character of a stack that it should be erected out of doors. *Reg. v. Munson*, 2 Cox, C. C. 186.

Setting fire to a parcel of unthreshed wheat was not a felony within 9 Geo. 1, c. 22. *Reg. v. Judd*, 2 T. R. 255; 1 Leach, C. C. 484; 2 East, P. C. 1018.

Straw—What is.—Sedge and rushes were not straw within 7 Will. 4 & 1 Vict. c. 89, which was confined to the straw of wheat, oats, barley and rye. *Reg. v. Baldock*, 2 Cox, C. C. 55.

The prisoners had set fire to a stack of stubble (which, in Cambridgeshire, is called haulm); they were indicted on a first indictment for setting fire to a stack of straw:—Held, that this was not straw. And, on their being again indicted for setting fire to a stack of straw called haulm, the judge intimated that to convict upon such a count would not be safe; and the verdict, in consequence, was taken upon other counts, charging the setting fire to a barn and a wheat stack. *Reg. v. Reader*, 4 C. P. 245; 1 M. C. C. 239.

Attempt to Set on Fire.—By 24 & 25 Vict. c. 97, s. 18, *whosoever shall unlawfully and maliciously, by any overt act, attempt to set fire to any such matter or thing as in either of the last two preceding sections mentioned (supra), under such circumstances that if the same were thereby set fire to, the offender would be, under either of such sections, guilty of felony, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven and not less than five years (27 & 28 Vict. c. 47); or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under sixteen, with or without whipping.* (Former statute, 9 & 10 Vict. c. 25, s. 7.)

—**Overt Act.**—It was a sufficient overt act to render a person liable to be found guilty of attempting to set fire to a stack, under 9 & 10 Vict. c. 25, s. 7, if he went to the stack with the intention of setting fire to it and lighted a lucifer match for that purpose, but abandoned the attempt because he found that he was being watched. *Reg. v. Taylor*, 1 F. & F. 511.

7. INDICTMENT.

Who Indictable.—A wife was not indictable under 7 & 8 Geo. 4, c. 30, s. 2, for setting fire to her husband's house with intent to injure him; as it is essential that there should be an intent to injure or defraud some third person, and not one identified with herself. *Reg. v. March*, 1 M. C. C. 182.

Owner of House.—It must appear upon the face of an indictment for arson that the house was that of another; and it must state whose house, and with that the proof should agree. *Reg. v. Rickman*, 2 East, P. C. 1034. And see *Reg. v. Glandfield*, 2 East, P. C. 1034.

A house, in part of which a man lives, and other parts of which he lets to lodgers, may be

described, in an indictment for setting fire to it, as his house, though he has taken the benefit of the Insolvent Debtors Act, and executed an assignment including the house, if the assignee has not taken possession; at least, no objection can be made, if in other counts it is stated as the house of the assignee, and in others of the lodger whose room was set fire to. *Reg. v. Ball*, 1 M. C. C. 30.

A common gaol was kept in repair by rates levied upon the inhabitants of the liberty in and for which the gaol was. The keeper of the gaol was appointed by the justices of the liberty. He did not reside at the gaol, but kept the keys and had the charge of it. He was also an inhabitant, and liable to be rated to the repair of the gaol:—Held, that in an indictment under 7 & 8 Vict. c. 62, s. 1, for setting fire to the gaol, it should have been laid to be in the possession of the keeper of the gaol. *Reg. v. Connor*, 2 Cox, C. C. 65.

Averment of Property.—Two were indicted, under 24 & 25 Vict. c. 97, s. 3, for feloniously setting fire to a shop "of and belonging to" one of them:—Held, that the averment of property was an immaterial averment which need not be proved. *Reg. v. Newbould*, 1 L. R., C. C. 344; 41 L. J., M. C. 63; 25 L. T. 883; 20 W. R. 343; 12 Cox, C. C. 148.

Thereby Burnt.—It was not necessary to aver in an indictment on 9 Geo. 1, c. 22, for setting fire to a hay-stack, that the stack "was thereby burnt." *Reg. v. Salmon*, R. & R. C. 26.

Absence of Malice no Answer.—In an indictment on 9 Geo. 1, c. 22, for setting fire to a hay-stack, it was no answer to the charge that the prisoner had no malice or spite to the owner of the stack. *Id.*

Place where Offence Committed.—On an indictment for setting fire to a stack of beans, a mistake as to the name of the place where the offence was committed is immaterial; the charge is transitory, not local. *Reg. v. Woodward*, 1 M. C. C. 323.

Intent to Injure or Defraud.—By 24 & 25 Vict. c. 97, s. 60, *it shall be sufficient in any indictment for any offence against the act, where it shall be necessary to allege an intent to injure or defraud, to allege that the party accused did the act with intent to injure or defraud, as the case may be, without alleging an intent to injure or defraud any particular person, and on the trial of any such offence it shall not be necessary to prove an intent to injure or defraud any particular person, but it shall be sufficient to prove that the party accused did the act charged with an intent to injure or defraud, as the case may be.*

A prisoner was convicted on an indictment for setting fire with intent to injure A. B. The property fired belonged to A. B. The jury found the intent to injure C. D.:—Conviction held good. *Reg. v. Newell*, 1 M. C. C. 458.

So an indictment under 7 & 8 Geo. 4, c. 30, s. 17, for setting fire to a stack of straw, was good, without stating any intent to injure. *Id.*

An indictment for setting fire to a barge, the property of another, ought to contain an averment that it was done with an intent to injure

the owner. *Rea v. Smith*, 4 C. & P. 569. Sed quare, see *Rea v. Newell*, 1 M. C. C. 458; and 24 & 25 Vict. c. 97, s. 60.

On an indictment for setting fire to a mill, with intent to injure the occupiers thereof:—Held, that an injury to the mill being the necessary consequence of setting fire to it, the intent to injure might be inferred; for a man must be supposed to intend the necessary consequence of his own act. *Rea v. Farrington*, R. & R. C. C. 207.

It is not necessary in a count in an indictment laid under 24 & 25 Vict. c. 97, s. 7, to allege an intent to defraud, and it is sufficient to follow the words of the section without substantively setting out the particular circumstances relied on as constituting the offence. *Reg. v. Hesselstine*, 12 Cox, C. C. 404.

A common gaol was kept in repair by rates levied upon the inhabitants of the liberty in and for which the gaol was:—Held, in an indictment under 7 & 8 Vict. c. 62, s. 1, for setting fire to the gaol, that the intent of the prisoner should have been laid to be to injure the inhabitants of the liberty. *Reg. v. Connor*, 2 Cox, C. C. 65.

Two persons were indicted under 24 & 25 Vict. c. 97, s. 3, for feloniously setting fire to a shop "of and belonging to" one of them:—Held, that the intent to injure another person as owner might be proved in support of the indictment. *Reg. v. Newbould*, 1 L. R., C. C. 344; 41 L. J., M. C. 63; 25 L. T. 883; 20 W. R. 343; 12 Cox, C. C. 148.

Upon an indictment for arson, with intent to injure the person in occupation of the premises, the prisoner may be found guilty, although his intent is proved to have been to obtain a reward for giving the earliest intimation of a fire at the engine station. *Reg. v. Regan*, 4 Cox, C. C. 335.

What set on Fire.—An indictment for setting fire to an out-house was good, though it might have in point of law formed part of the dwelling-house, the burning of which was arson at common law. *Rea v. North*, 2 East, P. C. 1021.

Upon a statute which made it capital to set fire to a stack of pulse, it was sufficient to state that the prisoner set fire to a stack of beans. The judges will take notice that beans are pulse. *Rea v. Woodward*, 1 M. C. C. 323.

An indictment on 7 & 8 Geo. 4, c. 30, s. 17, charging a party with setting fire to a stack of barley, of the value of 100*l.*, of R. P. W. was good, although the words of the statute creating the offence were "any stack of corn or grain." *Rea v. Scatkins*, 4 C. & P. 548.

Feloniously, &c.—Held, also, that if the indictment stated "that the prisoner feloniously, unlawfully, and maliciously did set fire to a certain stack of barley, of the value of 100*l.*, of R. P. W., then and there being," this is sufficient, without stating that the prisoner feloniously, unlawfully, and maliciously did then and there set fire to the stack. *Id.*

An indictment on 7 & 8 Geo. 4, c. 30, ss. 2 & 17, for setting fire to a barn and a stack of straw, charging the offences to have been committed "feloniously, voluntarily, and maliciously," instead of "feloniously, unlawfully, and maliciously," was bad. *Rea v. Reader*, 4 C. & P. 245; 1 M. C. C. 239.

8. EVIDENCE.

Notice to Produce Policy.—On an indictment for arson on the prosecution of an insurance company, their books are not evidence of the insurance, without notice to produce the policy. *Rea v. Doran*, 1 Esp. 127.

A prisoner tried at the assizes for arson, on Wednesday, the 20th of March, was on Monday, the 18th, served at the prison with a notice to produce a policy of insurance. The commission day was Friday, the 15th, and the prisoner's home was ten miles from the assize town:—Held, that the notice was served too late. *Rea v. Elliecombe*, 5 C. & P. 522; 1 M. & Rob. 260.

Notice to produce policies of insurance, served on the prisoner's attorney on Tuesday evening, the prisoner then being in Maidstone, and the policies twenty miles off, is sufficient when the trial takes place on Thursday. *Reg. v. Barker*, 1 F. & F. 326.

Upon an indictment for arson, with intent to defraud an insurance company, the nature of the proceedings does not give notice to the prisoner to produce the policy, so as to dispense with actual notice to produce it. *Reg. v. Kitson*, Dears. C. C. 187; 22 L. J., M. C. 118; 17 Jur. 422.

Proof of Actual Ill-will.—On an indictment for maliciously setting fire to a building, it is not necessary to prove actual ill-will in the prisoner towards the owner. *Reg. v. Davies*, 1 F. & F. 69.

Experiments.—Evidence of experiments made subsequently to the fire is admissible in order to shew the way in which the building was set on fire. *Reg. v. Hesselstine*, 12 Cox, C. C. 404.

What Admissible to shew Motive and Intent.—A. was indicted for wilfully setting fire to a rick by firing a gun close to it on the 29th of March: evidence that the rick was also on fire on the 28th of March, and that A. was then close to it, having a gun in his hand, is receivable to shew that the fire on the 29th was not accidental. *Reg. v. Dossett*, 2 C. & K. 306; 2 Cox, C. C. 243.

On an indictment for arson in setting fire to a rick, the property of A., evidence may be given of the prisoner's presence and demeanour at fires of other ricks, the property respectively of B. and C., occurring the same night, although those fires are the subject of other indictments against the prisoner, such evidence being important to explain his movements and general conduct before and after the fire of A.'s rick; but evidence is not admissible of threats, of statements, or of particular acts, pointing alone to other indictments, and not tending to implicate or explain the conduct of the prisoner in reference to that fire. *Reg. v. Taylor*, 5 Cox, C. C. 136.

Under an indictment for arson, where the prisoner is charged with wilfully setting fire to her master's house, the previous and abortive attempts to set fire to different portions of the same premises, are admissible though there is no evidence to connect the prisoner with either of them. *Reg. v. Bailey*, 2 Cox, C. C. 311.

Upon an indictment for arson it is not competent for the prosecutors to shew that other fires, of which notice was given by the prisoner, were of a similar nature to the one in question,

and different from those of which notice was given by other parties. *Reg. v. Regan*, 4 Cox, C. C. 335.

On an indictment for arson, one count laying an intent to defraud, and it being opened for the prosecution that the motive might have been to realise the money insured by the prisoner upon her goods: evidence was received that she was in easy circumstances, with a view to show that she was at all events under no pecuniary temptation to commit such an act. *Reg. v. Grant*, 4 F. & F. 322.

On a charge of arson (the case turning on identity) evidence was rejected that, a few days previously to the fire, another building of the prosecutor's was found on fire, and the prisoner was seen standing by, with a demeanour which shewed indifference or gratification. *Reg. v. Harris*, 4 F. & F. 342.

Upon a trial for arson with intent to defraud an insurance company, evidence that the prisoner had made claims on two other insurance companies in respect of fires which had occurred previously, and in succession, was admitted for the purpose of shewing that the fire which formed the subject of the trial was the result of design and not of accident. *Reg. v. Gray*, 4 F. & F. 1102.

V. ASSAULT AND BATTERY.

See MURDER and OFFENCES AGAINST THE PERSON.

VI. ATTEMPTS TO COMMIT OFFENCES.

Jury may find Guilty of Attempt on Indictment for the Offence.—By 14 & 15 Vict. c. 100, s. 9, *whereas offenders often escape conviction by reason that such persons ought to have been charged with attempting to commit offences, and not with the actual commission thereof, for remedy thereof be it enacted, that if, on the trial of any person charged with any felony or misdemeanor, it shall appear to the jury, upon the evidence, that the defendant did not complete the offence charged, but that he was guilty only of an attempt to commit the same, such person shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that the defendant is not guilty of the felony or misdemeanor charged, but is guilty of an attempt to commit the same, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for attempting to commit the particular felony or misdemeanor charged in the indictment; and no person so tried as herein lastly mentioned shall be liable to be afterwards prosecuted for an attempt to commit the felony or misdemeanor for which he was so tried.*

On an indictment under 24 & 25 Vict. c. 96, s. 57, for feloniously breaking and entering a shop with intent to commit a felony, a prisoner may be found guilty of misdemeanor in attempting to commit that felony. *Reg. v. Bain*, 9 Cox, C. C. 98.

A. was indicted for breaking and entering a dwelling-house, and stealing certain specified goods. It appeared that, at the time of the breaking and entering, the goods named in the indictment were not in the house, but there were other goods there belonging to the prosecutor.

The jury found that he was not guilty of the felony charged, but that he was guilty of breaking and entering the dwelling-house of the prosecutor, and attempting to steal his goods therein:—Held, that there was no attempt to commit felony charged within the meaning of the above section, and therefore the verdict could not be sustained. *Reg. v. M'Pherson*, Dears. & B. C. C. 197; 26 L. J., M. C. 134; 3 Jur., N. S. 523.

Felony would have been Effected if no Interruption.—An attempt to commit a felony can only be made out where, if no interruption had taken place, the felony itself could have been effected. *Reg. v. Collins*, L. & C. 471; 9 Cox, C. C. 497; 33 L. J., M. C. 177; 10 Jur., N. S. 686; 10 L. T. 581; 12 W. R. 886.

In order to commit an assault with intent to commit a rape the jury must be satisfied not only that the prisoner intended to gratify his passions on the person of the prosecutrix, but that he intended to do so at all events, and notwithstanding any resistance on her part. *Rea v. Lloyd*, 7 C. & P. 318.

Misdemeanor.—The moment a man takes one necessary step towards the completion of a misdemeanor, he commits a misdemeanor. *Reg. v. Chapman*, 2 C. & K. 846; 1 Den. C. C. 432; T. & M. 90; 18 L. J., M. C. 152; 13 Jur. 885.

Every step towards a misdemeanor, by an act done, is punishable as a misdemeanor. *Id.*

Any one act of fraud upon a public officer, with intent to deceive, whereby a matter required by law for the accomplishment of an act of a public nature is illegally obtained, amounts to an indictable misdemeanor; and it need not be alleged or proved either that the act was in fact accomplished, or that the party, at the time of committing the fraud, intended that it should be. *Id.*

A false oath taken before a surrogate, with intent to deceive such surrogate, and to obtain from him a licence for a marriage, is punishable as a misdemeanor, although it is not alleged in the indictment, nor proved in evidence, that the marriage was in fact celebrated, and although the party found guilty was not the person about to be married. *Id.*

Every attempt (not every intention, but every attempt) to commit a misdemeanor is a misdemeanor. *Reg. v. Martin*, 9 C. & P. 215; S. P., *Reg. v. Martin*, 9 C. & P. 213; 2 M. C. C. 123.

An attempt to commit a misdemeanor is a misdemeanor, whether the offence was created by statute, or was an offence at common law. *Rea v. Roderick*, 7 C. & P. 795; *Rea v. —*, R. & R. C. C. 107; *Rea v. Butler*, 6 C. & P. 368.

To enter Shop.—B. was indicted under 24 & 25 Vict. c. 96, s. 57, for having feloniously broken into and entered a shop, with intent to commit a felony therein. It was proved that he made a hole in the roof, with intent to enter and steal, but was disturbed. There was no evidence of his having in any way entered the building:—Held, that he was properly convicted of a misdemeanor of attempting to commit a felony. *Reg. v. Bain*, L. & C. 129; 9 Cox, C. C. 198; 31 L. J., M. C. 88; 8 Jur., N. S. 418; 10 W. R. 236.

An attempt to commit a burglary may be established on proof of a breaking with intent to

rob the house, although there is no proof of an actual entry. *Reg. v. Spanner*, 12 Cox, C. C. 155.

If Offence Committed, Jury cannot find Guilty of Attempt only.]—On an indictment for an assault with intent to commit rape, if penetration is proved, the prisoner cannot be convicted of the attempt. *Reg. v. Nicholls*, 2 Cox, C. C. 182.

Attempt to Steal—Nothing to be Stolen.]—If a person puts his hand into the pocket of another, with intent to steal what he can find there, and the pocket is empty, he cannot be convicted of an attempt to steal. *Reg. v. Collins*, L. & C. 471; 9 Cox, C. C. 497; 33 L. J., M. C. 177; 10 Jur., N. S. 686; 10 L. T. 581; 12 W. R. 886.

To obtain by False Pretences—When Prosecutor knows Pretences are False.]—The prisoner wrote a begging letter to the prosecutor, in which, by certain false statements, he attempted to obtain money. The prosecutor sent the prisoner five shillings, but stated at the trial that he knew the pretences were false:—Held, that he might be convicted of an attempt to obtain money by false pretences. *Reg. v. Hensler*, 11 Cox, C. C. 570; 22 L. T. 691; 19 W. R. 108.

C. was in the employ of a contractor for the supply of meat to a camp, and the course of business was for the meat to be sent down to the camp, there weighed out to the different messes, and the surplus, if any, returned to the contractor. C., whilst employed upon this duty by the contractor, during the weighing out, substituted a false weight for the true one, his intention being to carry away and steal the difference between the just surplus, for which he would have to account to his master, and the apparent surplus actually remaining after the first weighing. Nothing remained upon his part to complete his scheme except to carry away and dispose of the meat, which he would have done had the fraud not been detected:—Held, properly convicted of attempting to steal the meat. *Reg. v. Cheeseman*, 9 Cox, C. C. 100; L. & C. 140; 31 L. J., M. C. 89; 8 Jur., N. S. 143; 5 L. T. 717; 10 W. R. 255.

A., employed in a tannery, clandestinely removed certain skins of leather from the warehouse to another part of the tannery, for the purpose of delivering them to the foreman and getting paid for them as if they had been his own work:—Held, that this amounted to an attempt to commit the misdemeanor of obtaining money by false pretences. *Reg. v. Holway*, 1 Den. C. C. 370; T. & M. 48; 3 New Sess. Cas. 410; 2 C. & K. 942; 18 L. J., M. C. 60; 13 Jur. 86.

The defendant had contracted with the guardians of a poor law union to deliver loaves of a specified weight to any poor persons bringing a ticket from the relieving officer. The tickets were to be returned by the defendant at the end of the week, with a statement of the number of tickets sent back, whereupon he would be credited with the amount, and the money would be paid at the time stipulated in the contract. The defendant delivered to certain poor people who brought tickets loaves of less than the specific weight, returned the tickets with a note of the number sent, and obtained credit in account for the loaves so delivered; but before the time for

payment had arrived the fraud was discovered:—Held, that the defendant could properly be convicted of attempting to obtain money by false pretences, for although he had obtained credit in account, yet he had done all that was depending on himself towards the payment of the money. *Reg. v. Eagleton*, Dears. C. C. 515; 6 Cox, C. C. 559; 24 L. J., M. C. 158; 1 Jur., N. S. 940.

A man went to a pawnbroker's shop and laid down eleven thimbles on the counter, saying, "I want 5s. for them." The pawnbroker's assistant asked the man if they were silver, and he said they were. The assistant tested them, and found them not to be silver; he gave the man no money but sent for a policeman and gave him in custody:—Held, that the conduct of the man who presented the thimbles amounted to an attempt to commit the offence of obtaining money by false pretences. *Reg. v. Ball*, Car. & M. 249.

Attempts to Murder.]—See MURDER.

Indictment.]—An indictment for an attempt to commit larceny which charges the prisoner with attempting to steal "the goods and chattels of A." without further specifying the goods intended to be stolen, is sufficiently certain. *Reg. v. Johnson*, L. & C. 489; 10 Cox, C. C. 13; 34 L. J., M. C. 24.

An indictment which merely charges the defendant with unlawfully attempting and endeavouring, fraudulently, falsely and unlawfully, to obtain from A. a large sum of money with intent to cheat and defraud him, is bad in arrest of judgment. *Reg. v. Marsh*, 3 Cox, C. C. 571; 19 L. J., M. C. 12.

Evidence—Sufficiency of.]—Prisoners were charged with an attempt to commit a larceny. The evidence was that they, with another boy, were seen by a policeman to sit together on some doorsteps near a crowd, and when a well-dressed person came up to see what was going on, one made a sign to the others, and two of them got up and followed the person into the crowd. One of them was seen to lift the tail of a man's coat, as if to ascertain if there was anything in the pocket, but making no visible attempt to pick the pocket, and to place a hand against a woman's dress, but no actual attempt to insert the hand into the pocket was observed:—Held, not to be evidence of an attempt to steal. *Reg. v. Taylor*, 25 L. T. 75.

VII. BANKRUPTCY ACT, OFFENCES AGAINST.

See BANKRUPTCY—Fisher's "Digest."

VIII. BIGAMY.

1. *Statute.*
2. *Validity of Marriages*, 63.
3. *Marriages Abroad*, 66.
4. *Absence or Death of Parties*, 67.
5. *Where Triable*, 70.
6. *Indictment*, 70.
7. *Evidence and Witnesses*, 71.

1. STATUTE.

By 24 & 25 Vict. c. 100, s. 57, *whosoever, being married, shall marry any other person during the life of the former husband or wife, whether*

the second marriage shall have taken place in England or Ireland or elsewhere, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than five years (27 & 28 Vict. c. 47); or to be imprisoned for any term not exceeding two years, with or without hard labour;

And any such offence may be dealt with, inquired of, tried, determined, and punished in any county or place in England or Ireland where the offender shall be apprehended or be in custody, in the same manner in all respects as if the offence had been actually committed in that county or place;

Provided that nothing in this section contained shall extend to any second marriage contracted elsewhere than in England and Ireland by any other than a subject of her Majesty, or to any person marrying a second time whose husband or wife shall have been continually absent from such person for the space of seven years then last past, and shall not have been known by such person to be living within that time, or shall extend to any person who, at the time of such second marriage, shall have been divorced from the bond of the first marriage, or to any person whose former marriage shall have been declared void by the sentence of any court of competent jurisdiction. (Similar to 9 Geo. 4, c. 31, s. 22.)

2. VALIDITY OF MARRIAGES.

By Banns—Non-residence.—If the first marriage was by banns, it is no objection that the parties did not reside in the parish where the banns were published, and the marriage celebrated. *Ree v. Hind*, R. & R. C. C. 253.

Fictitious Name.—Semble, that assuming a fictitious name upon the second marriage will not prevent the offence from being complete. *Ree v. Allison*, R. & R. C. C. 109.

And if the prisoner has written down the names for the publication of the banns, he is precluded from saying that the woman was not known by the name he delivered in, and that she was not rightly described by that name in the indictment. *Ree v. Edwards*, R. & R. C. C. 283.

On an indictment against a man for bigamy, it appeared, that, for the purpose of concealment, the second wife was married by a name by which she had never been known:—Held, that this was no answer to the charge, although, if the first marriage had taken place under such circumstances, that would have been thereby rendered void. *Ree v. Penson*, 5 C. & P. 412.

A man, having a wife living, was married to another woman in the presence of the registrar, describing himself not as Edward Rea, his true name, but as Benjamin Rea. There was no evidence to shew that the second wife knew that his christian name was misdescribed:—Held, that he was guilty of bigamy. *Reg. v. Rea*, 1 L. R. C. C. 365; 41 L. J., M. C. 92; 26 L. T. 484; 20 W. R. 632; 12 Cox, C. C. 190.

In the publication of banns in 1817, a woman named Mary Hodgkinson was called White, a surname entered by mistake in the register of her baptism, but which she had never gone by or been entitled to. The false name was given to

the officiating clergyman without any intention to mislead; nor did any individual having an interest in the marriage appear to have been deceived:—Held, that the marriage was void. It might have been otherwise, if (without any fraudulent intent) there had been only a partial variation of the name, or the addition or suppression of one christian name, or the name had been one which the party had ever used or been known by. *Ree v. Tibshelf*, 1 B. & Ad. 190.

To render a marriage invalid within 4 Geo. 4, c. 76, s. 22, which enacts, "that if any person shall knowingly and wilfully intermarry without the publication of banns, the marriage of such persons shall be null and void," it must be contracted by both parties with a knowledge that no due publication has taken place; and, therefore, where the intended husband procured the banns to be published in a christian and surname which the woman had never borne, but she did not know that fact until after the solemnization of the marriage, the marriage was valid. *Ree v. Wroton*, 1 N. & M. 712; 4 B. & Ad. 640.

Valid Marriage rendered Void.—A marriage, which would have been void by 26 Geo. 2, c. 33, and had once been rendered valid by 3 Geo. 4, c. 75, s. 2, cannot be subsequently rendered invalid by the marriage of either of the parties, during the life of the other, with a third person. *Ree v. St. John Delpike*, 2 B. & Ad. 226.

Marriage within Prohibited Degrees.—When a person, already bound by an existing marriage, goes through with another person a form of marriage known to and recognized by the law as capable of producing a valid marriage, for the purpose of a pretended and fictitious marriage, such person is guilty of bigamy, notwithstanding any special circumstances which, independently of the bigamous character of the marriage, may constitute a legal disability in the parties, or make the form of marriage resorted to inapplicable to their case. *Reg. v. Allen*, 1 L. R., C. C. 367; 41 L. J., M. C. 97; 26 L. T. 664; 20 W. R. 756; 12 Cox, C. C. 193.

A man having a wife living, went through the ceremony of marriage with another woman, who was within the prohibited degrees of affinity; so that the second marriage, even if not bigamous, would have been void under 5 & 6 Will. 4, c. 54, s. 2:—Held, that he was guilty of bigamy. *Ib.*

The 5 & 6 Will. 4, c. 54, renders absolutely void all marriages solemnized after the time of its passing between persons within the prohibited degrees, and which were previously voidable only by sentence of the Ecclesiastical Court pronounced during the life of both parties. *Reg. v. Chadwiche (in error)*, 11 Q. B. 173; 2 Cox, C. C. 381; 17 L. J., M. C. 33; 12 Jur. 174.

Therefore, a marriage with deceased wife's sister contracted after the passing of that act is absolutely void. *Ib.*

A., a married woman, in the lifetime of her husband, married B., who was a widower, B. having been the husband of A.'s deceased sister:—Held, that this was bigamy in A., and that the circumstance that the marriage of A. and B. would have been wholly void under 5 & 6 Will. 4, c. 54, s. 2, even if A. had been unmarried, made no difference. *Reg. v. Brawn*, 1 C. & K. 144; 1 Cox, C. C. 33.

Minors—Consent of Parents.]—The marriage of a minor by licence without the consent required by 4 Geo. 4, c. 75, s. 16, is valid. *Rea v. Birmingham*, 2 M. & R. 230; 8 B. & C. 29. So under 6 & 7 Will. 4, c. 85, s. 25.

It is not necessary, on a prosecution for bigamy for a subsequent marriage of a minor, to prove the consent of the parent to the first marriage. *Reg. v. Clark*, 2 Cox, C. C. 183.

By 9 Geo. 2, c. 11 (*Irish*), the marriage of a minor without consent is void: but if no suit be commenced within one year after the marriage, it shall be good. Therefore, where it appeared in a case of bigamy that the first marriage was celebrated in Ireland by licence, when the prisoner was a minor, without his father's consent:—Held, that it was no defence, as more than a year had elapsed from the time of the marriage. *Rea v. Jacobs*, 1 M. C. C. 140.

Of Marriages Abroad.]—See *infra*, next col.

In Chapels and Licensed Places—Proof.]—

Upon an indictment for bigamy it was proved that the first marriage was solemnized, not in the parish church of the parish, but in a chamber in a building a few yards from the church, while the church was under repair. It was further proved that divine service had several times been performed in this building:—Held, that the building must be presumed to have been licensed, and therefore the first marriage was valid, and the man was properly convicted of bigamy. *Reg. v. Cresswell*, 1 Q. B. D. 446; 45 L. J., M. C. 77; 33 L. T. 760; 24 W. R. 281; 13 Cox, C. C. 126.

Where the first marriage was solemnized in a chapel, it was necessary to shew either that the chapel was one in which banns had been usually published before 26 Geo. 3, c. 33, or that the chapel was built and consecrated after that act, and before 6 Geo. 4, c. 92; and proof that marriages had been solemnized there for the last twenty years was not sufficient for this purpose. *Reg. v. Bowen*, 2 C. & K. 227.

The prisoner was convicted on an indictment for bigamy. It was alleged that the first marriage took place in a dissenting chapel duly licensed for marriages, and a witness was called who proved that he was present at the marriage, that it took place in the dissenting chapel in the presence of the registrar, that the entry of the marriage in the registrar's book was signed by the witness as a witness to the marriage, and that the parties afterwards lived together as husband and wife for some years:—Held, first, that the parol testimony of the witness sufficiently proved the fact of marriage. *Reg. v. Manwaring*, Dears. & B. C. C. 132; 7 Cox, C. C. 192; 26 L. J., M. C. 10; 2 Jur., N. S. 123.

Held, secondly, that there was *prima facie* evidence that the chapel was duly registered, and was a place in which marriages might legally be solemnized. *Id.*

A witness produced a certificate, under the hand of the superintendent registrar, of the fact that the chapel had been duly registered. It did not purport to be a copy or an extract, but the witness proved that he had examined it with the register book at the office of the superintendent registrar, and that it was correct:—Held, that the document was admissible as an examined copy or extract from the superintendent registrar's book, under 14 & 15 Vict. c. 99, s. 14, and

was therefore good evidence of the due registration of the chapel. *Id.*

Proof of a marriage before the registrar, although in a chapel not regularly licensed and registered, is sufficient. *Reg. v. Tilson*, 1 F. & F. 54.

Proof of a marriage in a chapel in the presence of the registrar of the district and two witnesses, is sufficient without proving that the chapel was registered. *Reg. v. Craddock*, 3 F. & F. 837.

Upon an indictment for bigamy, it appeared that the prisoner was married to his first wife in a place which had been registered pursuant to 6 & 7 Will. 4, c. 85. It was proved that notice of the marriage had been given to the superintendent registrar; but that notice was not produced by him. The registers of the marriage and of the building were, however, produced and read. It was objected that there ought to have been further evidence that due notice was given to the superintendent registrar; that he issued his certificate thereon, and that the marriage was celebrated in the building specified in that notice and certificate:—Held, that the evidence given proved a sufficient *prima facie* case, and that the conviction was right. *Reg. v. Hawes*, 2 Cox, C. C. 432; 1 Den. C. C. 270.

3. MARRIAGES ABROAD.

Law of Place where Marriage Solemnized.]—

Upon a trial for bigamy, the evidence on the part of the crown to establish the alleged bigamous marriage proved that the ceremony took place in an American State; that both the parties were British subjects, professing the Roman Catholic religion; that the ceremony was performed by Roman Catholic priests in a Roman Catholic church, after publication of banns, and that the parties afterwards cohabited. No evidence was given, either by the crown or the prisoner, of the law of the state where the marriage was solemnized:—Held, by Palles, C. B., Fitzgerald, B., Lawson and Barry, JJ. (diss., May, C. J., and O'Brien, J.), that the evidence was sufficient to sustain a conviction. *Reg. v. Griffin*, 14 Cox, C. C. 308; 4 L. R., Ir. 497.

In an indictment for bigamy everything relating to the first marriage must be proved strictly; and evidence of a marriage in Scotland by a Roman Catholic priest, who has previously performed similar ceremonies there, will not suffice without due proof of what the law as to such marriage is, although the prisoner may have admitted that he was, in fact, married in Scotland. *Reg. v. Savage*, 13 Cox, C. C. 178.

Marriage in Ireland—Validity.]—The marriage of a Protestant in Ireland to a Roman Catholic, by a Roman Catholic priest, is void, by 19 Geo. 2, c. 33 (*Irish*). *Sunderland's case*, 2 Lewin, C. C. 109.

A. was married to S., according to the rites of the Established Church, in 1858, and in April, 1865, during the lifetime of S., he was married to B. in a Roman Catholic church, in Dublin. B. knew A. six months previously to the marriage, and believed him to be a Roman Catholic. He told B. that he was a Roman Catholic. He had been born and reared a Protestant, and had attended the Protestant service on Christmas morning, 1864. The jury found that A. was a professing Protestant within twelve months pre-

vously to the marriage, and that he had held himself out as a Roman Catholic to the clergyman who married him, and had told the woman he was a Roman Catholic, and the jury convicted him of bigamy:—Held, that he was wrongly convicted. *Reg. v. Fanning*, 17 Ir. C. L. R. 289; 10 Cox, C. C. 411; 14 W. R. 701.

In Ireland, the marriage of two Roman Catholics by a Roman Catholic priest is good; and if a person at the time of such marriage declares himself to be a Roman Catholic, and the woman is a Roman Catholic, this is a good marriage as against him; and if he is afterwards tried for bigamy on this marriage (he having been before married to another wife, who was still alive), he will not be allowed to set up his supposed Protestantism as a defence to the charge. *Reg. v. Orgill*, 9 C. & P. 80.

—**Proof of.**—To prove a marriage of two Roman Catholics in Ireland, evidence was given that the Rev. W. O'S. (who officiated) acted as a Roman Catholic priest, and that the marriage (as was usual) took place at his house, and he asked the parties if they were Roman Catholics, and that they said they were so; that part of the ceremony was in English and part in Latin; and that having asked the man if he would take the woman as his wife, and the woman if she would take the man as her husband, and each having answered in the affirmative, he pronounced them married:—Held, sufficient. *Id.*

Marriage in Scotland—Validity.—For what is necessary to constitute a valid marriage in Scotland, see *Graham's case*, 2 Lewin, C. C. 97; *Dalrymple v. Dalrymple*, 2 Hagg. Cons. R. 54.

A., a subject of her Majesty, and resident in England, was married in Scotland, according to the law of Scotland. He subsequently married again in the same country, and according to the same law, his first wife being alive. Both wives, at the time of their marriage, were resident in England:—Held, that he had committed an offence against 9 Geo. 4, c. 31, s. 22. *Reg. v. Topping*, Dears. C. C. 647; 7 Cox, C. C. 103; 25 L. J., M. C. 72; 2 Jur., N. S. 428.

—**Proof of.**—On a trial for bigamy a woman was called as a witness, who stated that she was present at a ceremony performed in a private house in Scotland, by a minister of some religious denomination; that she herself was married in the same way, and that parties always married in Scotland in private houses:—Held, that she was not a competent witness to prove the law of Scotland as to marriage, and that her evidence did not prove the fact of a marriage. *Reg. v. Povey*, 6 Cox, C. C. 83; Dears. C. C. 32; 22 L. J., M. C. 19; 17 Jur. 120.

4. ABSENCE OR DEATH OF PARTIES.

Question for Jury—Knowledge of Prisoner.—It is a question for the jury whether the prisoner knew that his first wife was alive. *Reg. v. Dane*, 1 F. & F. 323.

In 1864 W. married A. In 1868 he was charged with bigamy in marrying B. In 1868, his wife A. being then alive, and was on such charge convicted. In 1879 he married C., and in 1880, C. being then alive, he married D. Afterwards,

upon a charge of bigamy in marrying D., C. being then alive, W. was convicted, it being held by the presiding judge that there was no evidence that A. was alive when W. married C., or that the marriage with C. was invalid by reason of A. being then alive:—Held, that the conviction could not be sustained, as the question should have been left to the jury whether upon the above facts A. was alive or not when W. married C. *Reg. v. Willshire*, 6 Q. B. D. 366; 50 L. J., M. C. 57; 44 L. T. 222; 29 W. R. 473; 45 J. P. 375; 14 Cox, C. C. 541.

On a trial for bigamy, it was proved that the prisoner married A. in 1836, left him in 1843, and married again in 1847. Nothing was heard of A. after the prisoner left him, nor was any evidence given of his age:—Held, that there was no presumption of law, either in favour of or against the continuance of A.'s life up to 1847; but that it was a question for the jury, as a matter of fact, whether or not A. was alive at the date of the second marriage in 1847. *Reg. v. Lumley*, 1 L. R., C. C. 196; 38 L. J., M. C. 86; 20 L. T. 454; 17 W. R. 685; 11 Cox, C. C. 274.

In 1863 the prisoner married his first wife, lived with her about a week, and then left her. It was not proved that he had since seen her. In 1867 he married another woman, his first wife being then alive. On the trial of an indictment for bigamy, the judge told the jury that they must be satisfied that the prisoner knew that his first wife was alive at the time of the second marriage:—Held, that the direction was right. *Reg. v. Jones*, 21 L. T. 396.

Where no evidence was given on either side as to his knowledge that his wife was alive, but it was proved that they had separated by agreement in 1843, and in 1857 he produced her at a trial in which he was interested:—Held, that it was for the jury to say whether there was an absence of knowledge on his part that his wife was alive in 1855, the date of the second marriage. *Reg. v. Cross*, 1 F. & F. 510.

Presumption of Continuance of Cohabitation.]

—The prisoner was convicted of bigamy. It was proved that he had married W. in 1865, and lived with her after the marriage, but for how long was not known; that in 1882, W. being still alive, he had gone through the form of marriage with another woman, but there was no evidence as to the prisoner and W. having ever separated, or as to when, if separated, they last saw each other:—Held, that the prisoner was rightly convicted. *Reg. v. Jones*, 11 Q. B. D. 108; 52 L. J., M. C. 96; 48 L. T. 768; 31 W. R. 800; 47 J. P. 535; 15 Cox, C. C. 284.

Whether Prisoner must use Means of Acquiring Knowledge.]

—A woman was convicted on an indictment for bigamy. It appeared that her first husband had been continually absent from her for seven years next preceding the second marriage; on which occasion she represented herself as a single woman, and was married by her maiden name. The jury being asked to consider whether she knew her husband to be alive at the time of the second marriage; and if not, whether she had the means of acquiring the knowledge, found that they had no evidence of her knowledge, but the jury were of opinion that she had the means of acquiring knowledge if she had chosen to make use of them:—Held, that upon that finding the conviction could not be sus-

tained. *Reg. v. Briggs*, Dears. & B. C. C. 98; 7 Cox, C. C. 175; 26 L. J., M. C. 7; 2 Jur., N. S. 1195.

Onus of Proof.—Whether evidence is necessary on the part of the prosecution to shew that the prisoner married, knowing his second wife to be alive, depends upon the particular facts of each case. *Reg. v. Ellis*, 1 F. & F. 309.

The law always presumes against the commission of crime; and, therefore, where a woman, twelve months after her first husband was last heard of, married a second husband, and had children by him:—Held, that the sessions did right in presuming *prima facie* that the first husband was dead at the time of the second marriage; and that it was incumbent on the party objecting to the second marriage to give some proof that the first husband was then alive. *Reg. v. Twynning*, 2 B. & A. 386.

It is not necessary for the prosecution to prove affirmatively that at the time of the second marriage the prisoner knew that his first wife was alive. *Reg. v. Jones*, 21 L. T. 396.

The burden of proof that a person charged with bigamy has not been continually absent from his wife for seven years, and that she was not known to him to be living within that time, is on the prosecution and not on the prisoner, for how can he prove a negative, that he did not know. *Reg. v. Heaton*, 3 F. & F. 819.

When it is proved that the prisoner and his first wife had lived apart for the seven years preceding the second marriage, it is incumbent on the prosecution to shew that during that time he was aware of her existence; and, in absence of such proof, he is entitled to be acquitted. *Reg. v. Curgenueen*, 1 L. R., C. C. 1; 35 L. J., M. C. 58; 11 Jur., N. S. 984; 13 L. T. 383; 14 W. R. 55; 10 Cox, C. C. 152.

Absence for Period of Seven Years.—Semble, that the construction of 9 Geo. 4, c. 31, s. 22, in relation to the offence of bigamy, is this: not that the party, charged to be deprived of the benefit of its provision as a defence, must have known at the time when he contracted the second marriage, that the first wife had been alive during the seven years preceding; but that to bring him within that provision, he must have been ignorant during the whole of those seven years that she was alive. *Reg. v. Cullen*, 9 C. & P. 687.

When the prisoner's first wife had left him sixteen years, and it was proved by the second wife that she had known him for nine years living as a single man, and that she had never heard of the first wife, who it appeared had been living seventeen miles from where the prisoner resided:—Held, that on this evidence the prisoner ought to be acquitted on the proviso contained in 9 Geo. 4, c. 31, s. 22. *Reg. v. Jones*, Car. & M. 614.

Bona fide Belief of Death—Marriage within Seven Years.—A bona fide belief by a wife that her husband is dead is no defence to an indictment for bigamy, unless he has been continuously absent for seven years. *Reg. v. Gibbons*, 12 Cox, C. C. 237.

In an indictment for bigamy, evidence is not admissible to shew that the prisoner honestly believed that his first wife was dead, when he married a second time, within seven years of his last having heard of or seen his first wife. *Reg. v. Bennett*, 14 Cox, C. C. 45.

Semble, that, however reasonable such a belief may be, it can only be used in mitigation of punishment after conviction. *Ib.*

It is a good defence to an indictment for bigamy that the prisoner at the time of the second marriage honestly and bona fide believed that his first wife was dead, and had reasonable grounds for so believing. *Reg. v. Horton*, 11 Cox, C. C. 670.

To an indictment for bigamy it is a good defence that at the time of the bigamous marriage the woman had a reasonable and bona fide belief that her husband was dead, although seven years had not elapsed since she had last heard of him. *Reg. v. Moore*, 13 Cox, C. C. 544.

5. WHERE TRIABLE.

By 24 & 25 Vict. c. 100, s. 57, *the offence may be dealt with, inquired of, tried, determined, and punished in any county or place in England or Ireland where the offender shall be apprehended or be in custody, in the same manner in all respects as if the offence had been actually committed in that county or place.* (Former provision, 9 Geo. 4, c. 31, s. 22.)

Where a prisoner, having been apprehended for larceny, was detained in the same county for bigamy, the detainer was such an apprehension as would warrant the indicting him in that county, under 1 Jac. 1, c. 11. *Reg. v. Gordon*, R. & R. C. C. 48.

Indictment—Averment in.—An indictment for bigamy, committed in one county, found by a jury of another where the prisoner was apprehended, must state that fact. *Reg. v. Fraser*, 1 M. C. C. 407.

But if an indictment for bigamy is tried at the same assizes at which the bill is found, it will sufficiently appear by the caption, that the party is in custody in the county, so as to give the court jurisdiction; and there need not, in that case, be any averment in the indictment, as to the custody. *Reg. v. Whaley*, 1 C. & K. 150; 2 M. C. C. 186. See *Reg. v. Smythies*, 1 Den. C. C. 498; 2 C. & K. 378.

An indictment was allowed to be amended as to the allegation of apprehension in the county. *Reg. v. Smith*, 1 F. & F. 36.

6. INDICTMENT.

Description of Wife.—The second wife being described as E. C., widow; she was, in fact, not a widow, nor had she ever been represented or reputed to be so:—formerly a fatal variance, but now amendable under 14 & 15 Vict. c. 100, s. 1. *Reg. v. Deeley*, 4 C. & P. 579; 1 M. C. C. 303.

If there was a discrepancy between the christian name of the prisoner's first wife as laid in the indictment, and as stated in the copy of the certificate which was produced to prove the first marriage, the prisoner must be acquitted, unless that discrepancy could be explained, or, in the absence of such proof, unless it could be shewn that the first wife was known by both names. *Reg. v. Gooding*, Car. & M. 297.

Marriage still Subsisting.—In an indictment, it is sufficient to aver the life of the first wife, without going on to allege that the marriage is

still subsisting. *Murray v. Reg. (in error)*, 7 Q. B. 700; 14 L. J., Q. B. 357; 9 Jur. 596.

Averment as to Custody of Prisoner.]—See supra.

7. EVIDENCE AND WITNESSES.

Certificate of Marriage.]—Where a first marriage was solemnized under 6 & 7 Will. 4, c. 85, the certificate authorized by that act and 6 & 7 Will. 4, c. 86, s. 38, coupled with the identity of the parties, is sufficient *prima facie* evidence of such marriage. *Reg. v. Hawes*, 1 Dcn. C. C. 270; 2 Cox, C. C. 432.

It is not necessary to put the original register in evidence to prove a marriage. *Sayer v. Glossop*, 2 C. & K. 694; 2 Ex. 409; 12 Jur. 465.

—Photograph to prove Identity.]—A photographic likeness of the first husband allowed to be shewn to the witnesses present at the first marriage, in order to prove his identity with the person mentioned in the marriage certificate. *Reg. v. Tolson*, 4 F. & F. 103.

Declarations of Prisoner.]—A prisoner's declarations, deliberately made, of a prior marriage in a foreign country, are sufficient evidence of such marriage, without proving it to have been celebrated according to the law of the country. *Reg. v. Newton*, 2 M. & Rob. 503; S. C., nom. *Reg. v. Simmonsto*, 1 C. & K. 164.

Seemle, that an acknowledgment alone by the prisoner of the fact of the first marriage would not be sufficient evidence of that fact. *Reg. v. Treman*, 1 East, P. C. 470.

But proof of such an acknowledgment, together with evidence of cohabitation, and that the prisoner backed his assertion by producing to the witness a copy of a proceeding in a Scotch court, for having improperly contracted the marriage (but which was a nullity), will be sufficient evidence of the first marriage. *Ib.*

Evidence of a marriage in Scotland by a Roman Catholic priest, who has previously performed similar ceremonies there, will not suffice without due proof of what the law as to such marriage is, although the prisoner may have admitted that he was, in fact, married in Scotland. *Reg. v. Savage*, 13 Cox, C. C. 178.

There ought to be some proof of the first marriage, beyond the mere statement of the prisoner while in custody; therefore, where a man went to a police station, and stated that he had committed bigamy, and when and where the first marriage took place, and while in custody signed a statement to the same effect, the judge thought this, though some evidence of the first marriage, was not sufficient, and so told the jury. *Reg. v. Flaherty*, 2 C. & K. 782.

Proof of Scotch Marriage.]—On a trial for bigamy, a woman was called as a witness, who stated that she was present at a ceremony performed in a private house in Scotland by a minister of some religious denomination; that she herself was married in the same way, and that parties always married in Scotland in private houses:—Held, that she was not a competent witness to prove the law of Scotland as to marriage, and that her evidence did not prove the fact of a marriage. *Reg. v. Povey*, Dears. C. C. 32; 6 Cox, C. C. 83; 22 L. J., M. C. 19; 17 Jur. 120.

What Sufficient to shew First Marriage Invalid.]—Evidence of the cohabitation of the first husband with another woman, his reputed wife, before the time of his marriage with the accused, and of such reputed wife being alive after the marriage, is sufficient evidence of a prior marriage to warrant an acquittal. *Reg. v. Wilson*, 3 F. & F. 119.

Sentence of Jactitation, Effect of.]—A sentence of jactitation was not conclusive evidence against an indictment of bigamy; for its validity might be impeached as having been obtained by fraud. *Kingston's (Duchess) case*, 1 Leach, C. C. 146; 1 East, P. C. 468.

Witnesses.]—A repnted wife cannot first give evidence in favour of her supposed husband. *Peat's case*, 2 Lewin, C. C. 111.

Quære, whether a woman who has gone through the ceremony of marriage with a man can be allowed to prove the invalidity of the marriage, and that she is not his wife. *Peat's case*, 2 Lewin, C. C. 288.

Seemle, that she may be examined upon the voir dire. *Ib.*; S. P., *Reg. v. Wakefield*, 2 Lewin, C. C. 279.

Proof of Marriage in Chapels and Licensed Places.]—See ante, col. 65.

—Solemnized Abroad.]—See ante, col. 66.

IX. BURGLARY AND HOUSEBREAKING.

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1. STATUTES.

By 24 & 25 Vict. c. 96, s. 51, *whosoever shall enter the dwelling-house of another with intent to commit any felony therein, or, being in such dwelling-house, shall commit any felony therein, and shall in either case break out of the said dwelling-house in the night, shall be deemed guilty of burglary.* (Former provisions, 7 & 8 Geo. 4, c. 29, s. 11.)

By s. 1, *the night shall be deemed to commence at nine of the clock in the evening of each day, and to conclude at six of the clock in the morning of the next succeeding day.*

By s. 52, *whosoever shall be convicted of the crime of burglary shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.*

By s. 53, no building, although within the same curtilage with any dwelling-house, and occupied therewith, shall be deemed to be part of such dwelling-house for any of the purposes of the act, unless there shall be a communication between such building or dwelling-house, either immediate, or by means of a covered and inclosed passage leading from the one to the other. (Former provisions, 7 & 8 Geo. 4, c. 29, s. 13.)

By s. 54, whosoever shall enter any dwelling-house in the night with intent to commit any felony therein shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

By s. 55, whosoever shall break and enter any building, and commit any felony therein, such building being within the curtilage of a dwelling-house, and occupied therewith, but not being part thereof, according to the provision hereinbefore mentioned, or being in any such building shall commit any felony therein, and break out of the same, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (Former provisions, 7 & 8 Geo. 4, c. 29, s. 14.)

2. BREAKING AND ENTERING.

Breaking—What Sufficient.—There must be both a breaking and an entering to constitute a burglary, and the breaking must be such as will afford the burglar an opportunity of entering, so as to commit the intended felony. *Reg. v. Hughes*, 1 Leach, C. C. 406; 2 East, P. C. 491.

Breaking Inner Door.—Though a thief enters a dwelling-house at night through an open door or a window, yet if, when within, he breaks or opens an inner door with intent to commit felony, it is burglary. *Reg. v. Johnson*, 2 East, P. C. 488.

Entry by Chimney.—A chimney is a part of a dwelling-house, and therefore the getting in at the top is a breaking of the dwelling-house. *Reg. v. Brice*, R. & R. C. C. 450.

Breaking by Threats.—When the family within the house was forced by threats and intimidations to let in the offenders by one of them opening the door:—Held, that it was as much a breaking by those who made use of such intimidations without, to prevail upon them so to open it, as if they had actually burst the door open. *Reg. v. Swallow*, 2 Russ. C. & M. 9.

Breaking by Consent of Servant.—A servant pretended to concur with two persons, who proposed to him to unite with them in robbing his master's house. The master being away from home, the servant communicated with the police and acted on their instructions. In consequence of this the servant lifted the latch and let in the two persons:—Held, that neither of

them could be convicted of burglary. *Reg. v. Jones*, Cas. & M. 218.

Pushing against Window.—Where a window opens upon hinges, and is fastened by a wedge, so that the pushing against it will open it; forcing it open by pushing against it is a sufficient breaking to constitute a burglary. *Reg. v. Hall*, R. & R. C. C. 355.

Broken Pane—Removing Fastening.—Removing the fastening of a window by the hand introduced through a partially broken pane of the window, and thereby opening the window and entering, is a breaking; not by breaking the residue of the pane, but by unfastening and opening the window. *Reg. v. Robinson*, 1 M. C. C. 327; *S. P., Ryan v. Shilecock*, 7 Ex. 72.

Window Open.—A window was a little open, and the prisoner pushed it wide open and got in:—Held, no sufficient breaking. *Reg. v. Smith*, Car. C. L. 293; 1 M. C. C. 178.

If there is an aperture in a cellar window to admit light, through which a thief enters in the night, this is not burglary. *Reg. v. Lewis*, 2 C. & P. 628.

Pushing in Cut Pane.—A. was charged with breaking into the house of K. and stealing the goods of M. It was proved as to the breaking that the glass of the window had been cut about a month before, but that every portion of the glass remained in its place till he pushed it in, and stole the goods:—Held, a sufficient breaking. *Reg. v. Bird*, 9 C. & P. 44.

Breaking Pane.—And it is a sufficient breaking to constitute such an offence, if the party breaks a pane of glass of a window, and puts his hand in for the purpose of opening the shutter, although he did not succeed in doing so. *Reg. v. Perkes*, 1 C. & P. 300.

Window Kept in Position by Weight.—Pulling down the sash of a window is a breaking sufficient to constitute burglary, although it has no fastening, and is only kept in its place by the pulley-weight; and it is equally a breaking although there is an outer shutter which is not put to. *Reg. v. Haines*, R. & R. C. C. 451.

Lifting Flap.—Lifting the flap of a cellar usually kept down by its own weight, is a sufficient breaking for the purpose of burglary. *Reg. v. Russell*, 1 M. C. C. 377.

The lifting up of a trap-door covering a cellar, which was merely kept in its place by its own weight, and which had no fastenings, because, it being a new trap-door, they had not been put on, is not a sufficient breaking to constitute a burglary; but unlocking and opening a hall door and running away is a sufficient breaking out of the house. *Reg. v. Lawrence*, 4 C. & P. 231.

Where a mill, under the same roof and within the same curtilage as a dwelling-house, had a trap-door over a gateway, which was only fastened by a lid-door kept down by its own weight, without bolts or other interior fastenings:—Held, that an entry into the mill in the night with intention to steal flour by raising the lid-door amounted to burglary. *Reg. v. Brown*, 2 East, P. C. 487; 2 Leach, C. C. 1016, n.

Breaking Out — Lawfully in House.]—If a person commits a felony in a house, and breaks out of it in the night-time, this is burglary, although he might have been lawfully in the house. *Reg. v. Wheeldon*, 8 C. & P. 747.

If a lodger in a house has committed a larceny there, and in the night-time even lifts a latch to get out of the house with the stolen property, this is a burglariously breaking out of the house. *Id.*

— **What sufficient.]**—On an indictment for stealing wine out of a cellar, and burglariously breaking out therefrom, it appeared that the prisoner broke out of the cellar by lifting up a heavy flap by which the cellar was closed on the outside next the street; the flap was not bolted, but it had bolts:—six judges were of opinion that there was a sufficient breaking to constitute burglary, but the remaining six were of a contrary opinion. *Reg. v. Cullan*, R. & R. C. C. 157. And see *Reg. v. Brown*, 2 East, P. C. 487; 2 Leach, C. C. 1016, n.

Unlocking and opening a hall door and running away is a sufficient breaking out of the house to constitute a burglary. *Reg. v. Lawrence*, 4 C. & P. 231.

Entry—What sufficient.]—It is not sufficient to constitute the offence of burglary, that there was an entry without a breaking of the outer door, and a breaking without an entry of an inner one. *Reg. v. Davis*, 6 Cox, C. C. 367.

A chimney is a part of a dwelling-house, and therefore where the prisoner, by lowering himself in the chimney, made an entry into the dwelling-house, though he did not enter any of the rooms, it is sufficient to constitute burglary. *Reg. v. Brice*, R. & R. C. C. 450.

Introducing the hand between the glass of an outer window and an inner shutter is a sufficient entry to constitute burglary. *Reg. v. Bailey*, R. & R. C. C. 341.

Where, in breaking a window in order to steal property in the house, the prisoner's finger went within the house:—Held, that there was a sufficient entry to constitute burglary. *Reg. v. Davis*, R. & R. C. C. 499.

Throwing up a window, and introducing an instrument between such window and an inside shutter, to force open the shutter, if the hand or some part of it is not within the window, is not a sufficient entry to constitute burglary. *Reg. v. Rust*, 1 M. C. C. 183.

So where the prisoner raised a window which was not bolted, and thrust a crowbar under the bottom of the shutter (which was about half a foot within the window), so as to make an indent on the inside of the shutter, but from the length of the bar his hand was not inside the house:—Held, that it was not a sufficient entry to constitute a burglary. *Reg. v. Roberts*, Car. C. L. 293; 2 East, P. C. 487.

On an indictment for burglary, it was proved the legs of the prisoner were seen hanging about a foot from the ground, from a window, and no other part of his body was visible till he jumped down and ran away:—Held, that though it appeared there was a hole broken in the window large enough to admit a man's head and shoulders, there was no evidence to show that there had been any actual entry, no property being lost. *Reg. v. Mead*, 3 Cox, C. C. 70.

On an indictment for burglary, where any part

of the person of the prisoner is within the dwelling-house, no matter with what immediate intent, there is a sufficient entry to constitute the offence, and therefore, where the hand was proved to have been inside the house, it is immaterial whether it was there for the purpose of lifting up a window, or of abstracting property. But where no part of the prisoner's body is inside the premises, but he introduces an instrument within it for the mere purpose of effecting an entry, and not with any other object, semble, that the entry is not complete. *Reg. v. O'Brien*, 4 Cox, C. C. 398.

3. WHAT IS NIGHT-TIME.

By 24 & 25 Vict. c. 96, s. 1, *the night shall be deemed to commence at nine of the clock in the evening of each day, and to conclude at six of the clock in the morning of the next succeeding day.* (Similar to 7 Will. 4 & 1 Vict. c. 86, repealed.)

Breaking and Entry on different Nights.]—The prisoner broke the glass of the prosecutor's side door on the Friday night, with intent to enter the house at a future time, and actually entered on the Sunday:—Held, that this was burglary, although a day had intervened, the breaking and entering being both by night, and the breaking being with intent afterwards to enter. *Reg. v. Smith*, R. & R. C. C. 417.

4. WHAT IS A DWELLING-HOUSE.

Permanent Building slept in occasionally.]—A public building used and slept in only for a short time for the purpose of a fair, may be treated as the dwelling-house of the person so occupying it, though unoccupied the rest of the year. *Reg. v. Smith*, 1 M. & Rob. 256.

Goods in House—No one Sleeping there.]—A house into which the owner has only removed his goods, but has not slept in, is not his dwelling-house as to burglary. *Reg. v. Thompson*, 2 Leach, C. C. 771; 2 East, P. C. 498.

A nocturnal breaking into a house of which the owner has no farther taken possession than by depositing in it sundry articles of merchandize, neither he nor any servant of his having slept in it, is not burglary, for it cannot be considered as the dwelling-house of the owner. *Reg. v. Harris*, 2 Leach, C. C. 701; 2 East, P. C. 498.

A house under repair, but not inhabited, is not the dwelling-house of the owner, though part of his property is deposited therein. *Reg. v. Lyons*, 1 Leach, C. C. 185; 2 East, P. C. 497. differently reported; *S. P.*, *Reg. v. Fuller*, 1 Leach, C. C. 186, n.

Where the owner of a house has never by himself, or by any of his family or servants, slept in the house, it is not his dwelling-house, so as to make the breaking in and stealing goods thereout burglary, though he has used it for his meals, and all the purposes of his business. *Reg. v. Martin*, R. & R. C. C. 108.

Servants Sleeping in House.]—Although a man leaves his house, and never means to reside in it again, yet, if he uses part of it as a shop, and lets a servant and his family live and sleep in another part of it, for fear the place should be robbed, and lets the rest to lodgers, the habita-

tion by his servant and family is a habitation by him, and the shop will be considered as part of the dwelling-house, so as to constitute the breaking thereof burglary. *Rex v. Gibbons*, R. & R. C. C. 422.

A burglary committed in a baker's shop, in which no person slept, but to which there was a communication by a trap-door and a ladder from the upper rooms of the house, in which only a weekly workman and his family lived by the permission of the three partners, who were owners of the whole house, may be laid to have been committed in the dwelling-house of these partners, they inhabiting it by means of their servant. *Rex v. Stock*, 2 Leach, C. C. 1015; R. & R. C. C. 185; 2 Taunt. 339.

Buildings separated from the dwelling-house by a public road will not be a parcel of the dwelling-house, but if such buildings are used as a sleeping place for any of the servants of the dwelling-house, they may be deemed a distinct dwelling-house. *Rex v. Westwood*, R. & R. C. C. 495.

Where the prosecutor left his house without any intention of living in it again, and intending to use it as a warehouse only; though he had persons (not of his family) to sleep in it, to guard the property:—Held, that it could not be considered as the dwelling-house of the prosecutor, so as to support a conviction for stealing therein. *Rex v. Flannagan*, R. & R. C. C. 187.

The owner of a house puts a person into it to sleep there at nights till he can get a tenant, in order to protect some furniture there, which he had purchased of the last tenant, which servant had so slept there for three weeks before, but the owner never intended to inhabit it himself:—Held, that a thief could not be convicted of stealing goods in the dwelling-house of such owner to the value of 40s. within 12 Anne, c. 8. *Rex v. Davis*, 2 East, P. C. 499; 2 Leach, C. C. 876.

Or, if the owner of a house has no intention of residing in it himself, it cannot be considered his dwelling-house, although his servant sleeps in it every night, if his sleeping there be merely to protect the furniture. *Ib.*

A porter lying in a warehouse does not make it a dwelling-house. *Rex v. Smith*, 2 East, P. C. 497; 2 Leach, C. C. 1018, n. And see *Rex v. Brown*, 2 East, P. C. 501; 2 Leach, C. C. 1018, n.

Whose Dwelling-House.—A garret made use of as a workshop, and rented with a sleeping-room by the week, is the mansion of the lodger, if the landlord does not sleep under the same roof. *Rex v. Currell*, 1 Leach, C. C. 287; 2 East, P. C. 506.

Lofts over coach-houses and stables, converted into lodging-rooms, are the dwelling-houses of their inhabitants, if there is an outer door. *Rex v. Turner*, 1 Leach, C. C. 305; 2 East, P. C. 492.

Two adjoining houses belonging to two partners, of which the rent and taxes are paid from the joint fund, may still be the respective mansions of each partner, if there is no communication from one to the other but through the outer doors to the street. *Rex v. Jones*, 1 Leach, C. C. 537; 2 East, P. C. 504.

Part of Dwelling-House—What is.—See 24 & 25 Vict. c. 76, s. 53 (*ante*, col. 73), by which many of the following cases are affected, but

they are retained as they may still serve to illustrate the subject.

If the out-house is adjoining to the dwelling-house, and occupied as parcel thereof, though there is no common inclosure or curtilage, it may still be considered as part of the mansion. *Rex v. Brown*, 2 East, P. C. 493.

On the trial of an indictment for breaking into a building within the curtilage, under 7 & 8 Geo. 4, c. 29, s. 14, it appeared, that the building was in the fold-yard of the prosecutor's farm; and that, to get from his dwelling-house to the fold-yard, it was necessary to pass through a yard called the pump-yard, into which the back-door of the dwelling-house opened, the pump-yard being separated from the fold-yard by a wall four feet high, in which there was a gate, the fold-yard having another gate leading to fields on one side, a hedge, with a gate leading to the high road, on another, the other sides of the fold-yard being bounded by the farm-buildings and a continuing wall from the dwelling-house:—Held, that the building was within the curtilage. *Reg. v. Gilbert*, 1 C. & K. 84.

An out-house in the yard of a dwelling-house will be parcel of the dwelling-house if the yard is inclosed, though the occupier has another dwelling-house opening into the yard, and he lets such dwelling-house with easements in the yard. *Rex v. Walters*, 1 M. C. C. 13.

A summer-house used occasionally for tea and retirement, within the same inclosure as the house, though at the distance of about half-a-mile, was a building within 4 Geo. 2, c. 32. *Rex v. Norris*, R. & R. C. C. 69. And see *Rex v. Parker*, 1 Leach, C. C. 320, n.

A building within the same fence as the dwelling-house, and used with it as parcel of the dwelling-house, though it has no internal communication with the house but through an open passage, is parcel of the dwelling-house. *Rex v. Hancock*, R. & R. C. C. 170.

And such a building is equally part of the dwelling-house, though used partly for the separate business of the occupier of the dwelling-house, and partly for a business in which he was a partner. *Ib.*

The prisoner broke into a goose-house opening into the prosecutor's yard, into which his house also opened; the yard was surrounded partly by other buildings of the homestead, and partly by a wall; some of the buildings had doors opening backwards, and there was a gate in one part of the wall opening upon a road; this goose-house was held part of the dwelling-house, so as to constitute the breaking thereof burglary. *Rex v. Clayburn*, R. & R. C. C. 360.

Buildings separated from the dwelling-house by a public road, however narrow, will not be a parcel of the dwelling-house, so as to constitute the breaking thereof burglary, if there is no common fence or roof to connect them, although held by the same tenure, and although some of the offices necessary to the dwelling-house adjoin thereto, and although there be an awning extending therefrom to the dwelling-house. *Rex v. Westwood*, R. & R. C. C. 495.

An area gate, opening into the area only, is not part of the dwelling-house so as to make the breaking thereof burglary, if there is any door or fastening to prevent persons in the area from entering the house, although such door or fastening may not be secured at the time. *Rex v. Davis*, R. & R. C. C. 322.

A door which only forms part of the outward fence of the curtilage, and opens into no building but into the yard only, is not such a part of the dwelling-house as that the breaking thereof will constitute burglary. *Rea v. Bennett*, R. & R. C. C. 289.

—**No Internal Communication.**—A shutter-box partly projected from a house, and adjoined the side of the shop window, which was protected by wooden panelling, lined with iron:—Held, that the breaking and entering the shutter-box did not constitute burglary. *Rea v. Paine*, 7 C. & P. 135.

The prosecutor's house was at the corner of a street, and adjoining thereto was a workshop, beyond which a stable and a coach-house adjoined; all were used with the house, and had doors opening into a yard belonging to the house, which yard was surrounded by adjoining buildings, so as to be altogether an inclosed yard; the workshop had no internal communication with the house, and it had a door opening into the street; its roof was higher than that of the dwelling-house; the street-door of the workshop was broken open in the night:—Held, the workshop was parcel of the dwelling-house. *Rea v. Chalkling*, R. & R. C. C. 334.

W. let part of his house, viz., a shop, passage, cellar, &c., to his son, who did not sleep therein, and there was a distinct entrance into the son's part, but his passage led to his father's cellars, and they were open to his father's part of the house. The shop was broken into, and the prisoner was convicted thereof:—Held, that by reason of the internal communication, the son's part continued part of the father's house, and therefore that it was burglary. *Rea v. Sefton*, R. & R. C. C. 202.

A shop adjoining to a house, if under the same roof, and within the curtilage, is part of the dwelling-house, although there is no internal communication between the shop and the house, and although no person sleeps in the shop. *Rea v. Gibson*, 1 Leach, C. C. 357; 2 East, P. C. 508.

A room in a dwelling, occupied therewith and under the same roof, will be deemed part of the dwelling-house, though it has a separate outer door, and no internal communication with the rest of the house. *Rea v. Burrows*, 1 M. C. C. 274.

On the trial of an indictment for burglary, it appeared that adjoining to the prosecutor's dwelling-house was a kiln, one end of which was supported by the end wall of the dwelling-house, and that adjoining to the kiln was a dairy, one end of which was supported by the end wall of the kiln. There was no internal communication from the dwelling-house to the dairy, and the roofs of the dwelling-house, kiln, and dairy were of different heights:—Held, that the dairy was not part of the dwelling-house, and that a burglary could not be committed by breaking into it. *Reg. v. Higgs*, 2 C. & K. 322.

A building used with and under the same roof with a dwelling-house, but having no internal communication with it, although opening into an inclosed yard belonging to the house, and also into an adjoining street, may be parcel of the dwelling-house, so as to constitute the breaking and entering thereof a burglary. *Rea v. Lithgo*, R. & R. C. C. 357.

A manufactory carried on in the centre building of a great pile, in the wings of which several persons dwelt, but having no internal communication with the same, though the roofs of all were connected, and the entrances of all were out of the same common inclosure:—Held, not a dwelling-house in which burglary could be committed. *Rea v. Egginton*, 2 East, P. C. 494, 666; 2 Leach, C. C. 913; 2 B. & P. 508.

5. BREAKING INTO CHURCHES AND PLACES OF DIVINE WORSHIP.

Statute.—By 24 & 25 Vict. c. 96, s. 50, *whoever shall break and enter any church, chapel, meeting-house or other place of divine worship, and commit any felony therein, or being in any church, chapel, meeting-house or other place of divine worship shall commit any felony therein and break out of the same, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (Previous provision, 7 & 8 Geo. 4, c. 29, s. 10.)*

By s. 57, *whosoever shall break and enter any dwelling-house, church, chapel, meeting-house, or other place of divine worship, or any building within the curtilage, school-house, shop, warehouse or counting-house, with intent to commit any felony therein, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.*

Church or Chapel—What is.—A dissenting meeting-house was not within 7 & 8 Geo. 4, c. 29, s. 10, which made it a capital offence to "break and enter any church or chapel, and steal therein." *Rea v. Richardson*, 6 C. & P. 335; *S. P.*, *Rea v. Warren*, 6 C. & P. 335, n.

A prisoner was indicted under 7 & 8 Geo. 4, c. 29, s. 10, for breaking and entering a chapel, and stealing several fixtures, and a bell not fixed. The chapel was a Wesleyan chapel, and not a chapel of the Church of England:—Held, that the case must be confined to the act of simple larceny, for stealing the bell. *Rea v. Niam*, 7 C. & P. 442.

Part of Church.—If a church tower is built higher than the church, and has a separate roof, but has no outer door, and is only accessible from the body of the church, from which it is not separated by any partition; this tower is a part of the church within 7 & 8 Geo. 4, c. 29, s. 10. *Rea v. Wheeler*, 3 C. & P. 583.

The vestry of a church was broken open and robbed. It was formed out of what before had been a church porch, but had a door opening into the churchyard, which could only be unlocked from the inside:—Held, that this vestry was part of the fabric of the church, and within the meaning of an indictment for sacrilegiously breaking and entering the church. *Reg. v. Evans*, Car. & M. 298.

At Common Law.]—Burglary may be committed in a church at common law. *Reg. v. Baker*, 3 Cox, C. C. 581.

Goods the Subject of Larceny.]—The provisions of 1 Edw. 6, c. 12, s. 10, were not confined to goods used for divine service; they extended to articles kept in the church to keep it in repair, and therefore a conviction on an indictment on that act, for stealing a snatch-block to raise weights in case the bells wanted repairing, and an iron pot for charecoal, used to air the vaults, was held right. *Reg. v. Bourke*, R. & R. C. C. 386.

To warrant a conviction for breaking and entering a church under 7 & 8 Geo. 4, c. 29, s. 10, there must have been a stealing therein of some chattel. Stealing a fixture was not sufficient. But if the stealing of fixtures was averred in such count, the prisoner might be convicted simply thereof under s. 44. *Reg. v. Baker*, 3 Cox, C. C. 581.

A. and B. were indicted for sacrilegiously breaking into a church and stealing a box and money:—Held, that the box (under the circumstances) was not affixed to the freehold, but was constructively in the possession of the vicar and churchwardens. *Reg. v. Wortley*, 1 Den. C. C. 162.

6. INTENT.

Breaking and entering a house in the night-time to recover tea, which had been seized, is no burglary, being intended for the benefit of the supposed owner. *Reg. v. Knight*, 2 East, P. C. 510.

If several agree to commit a burglary, but one communicates the intent to an officer, that he may take the other two, and the officer is upon the watch accordingly; the person who has made that communication to the officer will not be particeps criminis in the burglary, although he is present when it is committed, and pretends to assist the other two, but in fact expedites their apprehension. *Reg. v. Dannelly*, R. & R. C. C. 310; 2 Marsh. 571.

Nor will it make any difference, although his object in detecting is to obtain for himself (by previous agreement with the officer) part of a reward that will be payable on conviction. *Id.*

7. ARMED WITH INTENT TO BREAK OR ENTER.

Statute.]—By 24 & 25 Vict. c. 96, s. 58, *whoever shall be found by night armed with any dangerous or offensive weapon or instrument whatsoever, with intent to break or enter into any dwelling-house or other building whatsoever, and to commit any felony therein, or shall be found by night having in his possession without lawful excuse (the proof of which excuse shall lie on such person) any picklock, key, crow, jack, bit, or other implement of housebreaking, or shall be found by night having his face blackened or otherwise disguised with intent to commit any felony, or shall be found by night in any dwelling-house or other building whatsoever with intent to commit any felony therein, shall be guilty of a misdemeanor. (Precisely similar to former enactments, 14 & 15 Vict. c. 19, s. 1.)*

By s. 59, *whoever shall be convicted of any such misdemeanor as in the last preceding section mentioned, committed after a previous conviction*

either for felony or such misdemeanor, shall on such subsequent conviction be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding ten years and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour. (Former provision, 14 & 15 Vict. c. 19, s. 2.)

What are Implements of Housebreaking.]—

Keys are implements of housebreaking within the statute; for though commonly used for lawful purposes, they are capable of being employed for purposes of housebreaking, and it is a question for the jury whether the person found in possession of them by night, had them without lawful excuse, and with the intention of using them as implements of housebreaking. *Reg. v. Oldham*, 2 Den. C. C. 472; 3 C. & K. 249; 5 Cox, C. C. 551; 21 L. J., M. C. 134; 16 Jur. 505.

Semble, per Maule, J., that the printed copy of the section of the statute is wrongly punctuated, and that the word key is within the express terms of the statute. *Id.*

Intent to commit Felony Immaterial.]—An intent to commit felony forms no ingredient of the offence of being found by night in the possession of housebreaking instruments without lawful excuse. *Reg. v. Bailey*, Dears. C. C. 244; 6 Cox. C. C. 241; 23 L. J., M. C. 13; 17 Jur. 1106.

Particular House must be specified.]—Where persons are charged, under 24 & 25 Vict. c. 96, s. 58, with being found by night armed with an offensive weapon, with intent to break and enter into a dwelling-house or other building, and to commit a felony therein, the particular house or building must be specified in the indictment, and proof given of their intent to break and enter such house or building. *Reg. v. Jarrauld*, 9 Cox, C. C. 307; L. & C. 301; 32 L. J., M. C. 258; 9 Jur., N. S. 629; 8 L. T. 515; 11 W. R. 577.

Implements of Housebreaking—Possession by one is Possession by all.]—When several persons are found out together by night for the common purpose of housebreaking, and one only is in possession of the housebreaking implements, all may be found guilty of the misdemeanor of being found by night in possession of implements of housebreaking without lawful excuse under 24 & 25 Vict. c. 96, s. 58, for the possession of one is in such case the possession of all. *Reg. v. Thompson*, 11 Cox, C. C. 362; 21 L. T. 397.

8. STEALING IN A DWELLING-HOUSE.

Sec 24 & 25 Vict. c. 96, s. 56, *infra*.

Charge of Stealing Specified Goods.]—A. was indicted for breaking and entering a dwelling-house, and stealing certain specified goods. At the time of breaking and entering, the goods named in the indictment were not in the house, but there were other goods there belonging to the prosecutor. The jury found that he was not guilty of the felony charged, but that he was guilty of breaking and entering the dwelling-house of the prosecutor, and attempting to steal

his goods therein:—Held, that there was no attempt to commit the felony charged within 14 & 15 Vict. c. 100, s. 9, and therefore the verdict could not be sustained. *Reg. v. McPherson*, Dears. & B. C. C. 197; 7 Cox, C. C. 281; 26 L. J. M. C. 134; 3 Jur., N. S. 523.

No Actual Stealing.]—An indictment for feloniously breaking and entering a dwelling-house, with intent feloniously to steal therein, and not for actually stealing, cannot be sustained, the felony created by 7 & 8 Geo. 4, c. 29, s. 12, being entering and stealing. *Reg. v. Wenmouth*, 9 Cox, C. C. 348.

In whom Property in Goods Laid.]—A prisoner was indicted for breaking into the house of Elizabeth A. and stealing her goods. There was a second count laying the property of the goods in the Queen. It was shewn by proof of the record that the husband of Elizabeth A. had been convicted of felony, and it was also proved that he was in prison under his sentence, and that the articles stolen were his before his conviction, and had remained in the house from the time of his apprehension, and that the wife continued in possession of the house and goods till they were stolen:—Held, that the prisoner might be properly convicted of larceny on the second count, which laid the property of the goods in the Queen, although there had been no office found, and that he could not be convicted of housebreaking, as that part of the indictment which laid the goods and the house to be those of Elizabeth A. could not be supported. *Reg. v. Whitehead*, 9 C. & P. 429.

A. was charged with breaking into the house of K., and stealing the goods of M. It was proved by M. that K., his brother-in-law, had taken the house, and that M. (who lived on his property) carried on the trade of a silversmith for the benefit of K. and his family, having himself neither a share in the profits nor a salary. M. stated that he had authority to sell any part of the stock, and might take money from the till, but that he should tell K. of it; and that he sometimes bought goods for the shop, and sometimes K. did it:—Held, that M. was a bailee, and that the goods in the shop might properly be laid as his property. *Reg. v. Bird*, 9 C. & P. 44.

Prisoner Admitted by Servant.]—A servant pretended to concur with two persons, who proposed to him to unite with them in robbing his master's house. The master being out of town, the servant communicated with the police, and acted under their instructions. In consequence of this, a little after nine o'clock one evening, he let in one of the persons, by lifting the latch; but before that person had taken any property he was seized by the police, and, a crow-bar being found upon him, was immediately placed in confinement. After this the servant went out again, and fetched the second person, and let him in in the same manner. This person was seized with a basket of plate in his hand, which he had carried from the kitchen, part of the way upstairs:—Held, that neither of the persons could be convicted of burglary; but that the one who was seized with the plate might be convicted of stealing in a dwelling-house. *Reg. v. Jones*, Car. & M. 218.

9. BREAKING INTO SCHOOLS, SHOPS, WAREHOUSES OR COUNTING-HOUSES.

Statute.]—By 24 & 25 Vict. c. 96, s. 56, *whoever shall break and enter any dwelling-house, school-house, shop, warehouse or counting-house, and commit any felony therein, or, being in any dwelling-house, school-house, shop, warehouse, or counting-house, shall commit any felony therein, and break out of the same, shall be guilty of felony.* (Former provisions, 7 & 8 Geo. 4, c. 29, ss. 12, 15.)

By s. 57, *whosoever shall break and enter any dwelling-house, church, chapel, meeting-house, or other place of divine worship, or any building within the curtilage, school-house, shop, warehouse, or counting-house, with intent to commit any felony therein, shall be guilty of felony.*

Shops.]—A shop, to be within the 7 & 8 Geo. 4, c. 29, s. 15, and 7 Will. 4 & 1 Vict. c. 90, s. 2, must be a shop for the sale of goods, and a mere workshop will not be sufficient. *Reg. v. Sanders*, 9 C. & P. 79.

But a person who breaks into a blacksmith's shop and steals goods there might be convicted of breaking into a shop and stealing goods under 7 & 8 Geo. 4, c. 29, s. 15. *Reg. v. Carter*, 1 C. & K. 173.

An opening of a door in a shop under the same roof where the prisoner lived as a servant, for the purpose of committing a felony, was a breaking and entering within 7 & 8 Geo. 4, c. 29, s. 12. *Reg. v. Wenmouth*, 8 Cox, C. C. 348.

Warehouses.]—A cellar used merely for the deposit of goods intended for removal and sale is a warehouse. *Reg. v. Hill*, 2 M. & Rob. 458.

Counting-houses.]—A building formed part of premises employed as chemical works; it was commonly called the machine-house, a weighing machine being there, where all the goods sent out were weighed, and a hook being kept there in which entries of the goods so weighed were made. The account of the time of the workmen employed in the works was kept in this place, the wages of the men were paid there; the books in which the entries of time and the payment of wages were entered were brought to the building for the purpose of making entries and paying wages, but at other times they were kept in what was called the office, where the general books and accounts of the concern were kept:—Held, that this building was properly described in an indictment as a counting-house within 7 & 8 Geo. 4, c. 29, s. 15. *Reg. v. Potter*, 2 Den. C. C. 235; 3 C. & K. 179; 5 Cox, C. C. 187; T. & M. 561; 20 L. J., M. C. 170; 15 Jur. 498.

10. INDICTMENT.

Name of Owner of House is Essential.]—The name of the owner of the house is essential in an indictment for burglary, and for stealing in the dwelling-house. *Reg. v. Whit*, 1 Leach, C. C. 252; 2 East, 513, 780; S. P., *Reg. v. Woodward*, 1 Leach, C. C. 253, n.

— **Actual Occupier.]**—A house may be described as in the possession of the actual occupier, though his possession is wrongful. *Reg. v. Wallis*, 1 M. C. C. 344.

— **Caretaker.**]—A prisoner was indicted for burglary in the dwelling-house of B. B. worked for W., who did carpenter's work for a public company, and put B. into the house, which belonged to the company, to take care of it, and some mills adjoining. B. received no more wages after than before he went to live in the house:—Held, not rightly laid. *Rea v. Rawlings*, 7 C. & P. 150.

— **Workhouse.**]—In an indictment for burglary in the workhouse of a poor law union, the workhouse, being under 5 & 6 Will. 4, c. 69, s. 7, may be described as the dwelling-house of the guardians of the poor of that union. Semble, that the workhouse cannot be described as the dwelling-house of the master of the workhouse. *Reg. v. Frowen*, 4 Cox, C. C. 266.

— **Tenant at Will.**]—If the owner of a house suffers a person to live in it rent-free, it may be stated, in an indictment for breaking into such house in the day-time, to be that person's house; such person being tenant at will. *Rea v. Collett*, R. & R. C. C. 498.

— **Joint Tenants.**]—If a house is let to A., and a warehouse under the same roof, with an internal communication to the house, to A. and B.; the warehouse, in an indictment for burglary, cannot be described as the dwelling-house of A. *Rea v. Jenkins*, R. & R. C. C. 244.

If two or more rent of the same owner different parts of the same house, so as to have amongst them the whole house, and the owner does not reserve or occupy any part of it, the separate part of each may be described as the dwelling-house of each. *Rea v. Bailey*, 1 M. C. C. 23.

A house the joint property of partners in trade, and in which their business is carried on, may be described as the dwelling-house of all the partners, though only one of them resides in it. *Rea v. Athea*, 1 M. C. C. 329. See *Rea v. Jones*, 1 Leach, C. C. 537; 2 East, P. C. 504.

— **Married Women.**]—If a married woman takes a house, in which a burglary is committed, the house must be laid as the house of the husband, although she is living separate from him. *Rea v. Smyth*, 5 C. & P. 201.

The house of a husband in which he allows his wife to live separate from him, may be described in an indictment for burglary, as the house of the husband, although the wife lived there in adultery with another man, who paid the house-keeping expenses; and although the husband suspected a criminal intercourse between his wife and the other man when he allowed her to live separate. *Rea v. Wilford*, R. & R. C. C. 517.

Where a married woman lived apart from her husband, upon an income arising from property vested in trustees for her separate use:—Held, that a house which she had hired to live in was, in an indictment for burglary, properly described as her husband's dwelling-house, although she paid the rent out of her separate property, and the husband had never been in it. *Rea v. French*, R. & R. C. C. 491.

— **Lodgers.**]—The apartments of lodgers will be considered as their respective dwelling-houses, if the owner of the premises does not sleep under the same roof. *Rea v. Rogers*, 1 Leach, C. C.

89; 2 East, P. C. 506. See *Rea v. Carrell*, 1 Leach, C. C. 287; 2 East, P. C. 506.

A house, the whole of which is let out in lodgings, and has only one outer door common to all its inmates, is the mansion-house of its several inhabitants. *Rea v. Trapshaw*, 1 Leach, C. C. 427; 2 East, P. C. 506, 780. See *Rea v. Turner*, 1 Leach, C. C. 305; 2 East, P. C. 492.

— **Innkeeper or Guest.**]—Where one, under pretence of being robbed, forced the door of a guest's chamber in an inn, at night, and stole his goods:—Held, that the burglary must be laid to be in the dwelling-house of the innkeeper, and not of the guest. *Rea v. Prosser*, 2 East, P. C. 502.

— **Company or Officer or Agent.**]—If a burglary is committed in the house of a trading company, in the house belonging to which an agent of the company resides, with his family, for the purpose of carrying on the business, it may be laid to be the dwelling-house of the agent, although the rent is paid and the lease is held by the company. *Rea v. Margetts*, 2 Leach, C. C. 930.

Though a servant lives rent-free in a house belonging to an insurance company, and the company pays the taxes, and the company's business is carried on in the house, yet if the servant and his family are the only persons who sleep in the house, and the part in which the company's business is carried on is at all times open to those parts in which the servant lives, it may be stated as the servant's house, though the only part entered by the thief was that in which the company's business was carried on; and though the judges would not say that it might not have been described as the company's house, they thought it might, with equal propriety, be described as the house of the servant. *Rea v. Witt*, 1 M. C. C. 248.

A burglary in the apartments of officers of a public company must be laid to be in the mansion-house of such company. *Rea v. Hawkins*, 2 East, P. C. 501.

— **Rooms in College.**]—So of the apartments of a college not occupied by the students, as the buttery. *Rea v. Maynard*, 2 East, P. C. 501.

— **Master or Servant.**]—Though a servant lives rent-free for the purpose of his service in a house provided for that purpose; yet, if he has the exclusive possession, and it is not parcel of any premises which his master occupies, it may be described as the house of the servant; especially if the house belongs not to his master, but to some person paramount to his master; as in the case of a toll-collector's house, occupied by the servant of the lessee of the tolls for the purpose of collecting the tolls. *Rea v. Camfield*, 1 M. C. C. 42.

If the owner of a cottage lets one of his workmen, with his family, live in the cottage free of rent and taxes, and he lives there principally, if not wholly, for his own benefit, it may be described as the workman's dwelling-house in an indictment for burglary. *Rea v. Jobling*, R. & R. C. C. 525.

A. was in the service of B. and lived in a house close to B.'s place of business. B. did not live in the house himself, but he paid the rent and taxes. A. paid nothing for his occupation. Part

of the house was used as store-rooms for B.'s goods:—Held, that this was the dwelling-house of B., and was improperly described in the indictment as the dwelling-house of A. *Reg. v. Courtenay*, 5 Cox, C. C. 218.

A gardener lived in a house of his master, quite separate from the dwelling-house of his master, and the gardener had the entire control of the house he lived in, and kept the key:—Held, that, on an indictment for burglary, the gardener's house might be laid either as his or as his master's. *Rex v. Rees*, 7 C. & P. 568.

If a servant lives in a house of his master's at a yearly rent, the house cannot be described as the master's house, though it is on the premises where the master's business is carried on, and although the servant has it because of his services. *Rex v. Jarvis*, 1 M. C. C. 7.

Where a servant had part of a house for his own occupation, and the rest, in which a burglary is committed, is reserved by the proprietor for other purposes, the part reserved cannot be deemed part of the servant's dwelling-house. *Rex v. Wilson*, R. & R. C. C. 115.

And it will be the same if any other person has part of the house, and the rest is reserved. *Ib.*

See also cases ante, col. 77.

Place.—It is sufficient to allege that the burglary was committed at a place, naming it, e. g., "at Norton-juxta-Kempsey, in the county aforesaid," without stating the place to be a parish, vill, chapelry, or the like. *Reg. v. Brookes*, Car. & M. 544.

An indictment for breaking into a warehouse, and stealing goods, stated the offence to have been committed in "the parish of St. Peter the Great, in the county of W." Part only of the parish of St. Peter the Great is in the county of W.:—Held, that indictment could not be supported for the breaking into the warehouse, but that it was sufficient for the larceny; and that to be good as to the breaking, it should have charged the offence to have been committed "in that part of the parish of St. Peter the Great which lies within the county of W." *Ib.*

An indictment for housebreaking, after charging the breaking and entering in the usual form, charging that the prisoner "forty-two pieces of the current gold coin of this realm, called sovereigns, of the value of 42*l.*, in the same dwelling-house then and there being found, then and there feloniously did steal and carry away:" is good, and the words "then and there," in the last allegation, are sufficient without the words "in the same dwelling-house" being added to them. *Reg. v. Andrews*, Car. & M. 121.

An indictment alleging that J. F., late of the parish of F., in the county of M., with force and arms, at the parish aforesaid, in the county aforesaid, the dwelling-house of the guardians of the poor of the P. Union, there situate, feloniously did break and enter, is a sufficient description of the situation of the workhouse, the words "there situate," referring not to the union, but to the parish before mentioned. *Reg. v. Frouwen*, 4 Cox, C. C. 266.

Time at which Offence Committed.—It is sufficient in an indictment for burglary to allege that the offence was committed, burglariously, without

stating the time at which the offence was committed, or even that it was done in the night time. *Reg. v. Thompson*, 2 Cox, C. C. 445. *Contra, Rex v. Waddington*, 2 East, P. C. 513.

Property in Goods.—An indictment for burglary charged the prisoner with breaking, in the night-time, into the dwelling-house of E. B., "with intent the goods and chattels in the same dwelling-house then and there being feloniously and burglariously to steal, and stealing the goods of E. B." It was proved that the house was that of E. B., but that the goods the prisoner stole were the joint property of E. B. and two others:—Held, that if it was proved that the prisoner broke into the house of E. B. with intent to steal the goods there generally, that would be sufficient to sustain the charge of burglary contained in the indictment, without proof of an intent to steal the goods of the particular person whose goods the indictment charged that he did steal. *Reg. v. Clarke*, 1 C. & K. 421.

An indictment for burglariously breaking and entering the house of A., with intent to steal the goods of B., is bad, if no person of that name had any property in the house. *Rex v. Jenks*, 2 Leach, C. C. 774; 2 East, P. C. 514.

An indictment which charges that the prisoner unlawfully broke and entered the dwelling-house of R. P. P., "with intent the goods and chattels in the dwelling-house then and there being then and there feloniously to steal, take and carry away," is good, although it does not state whose goods the prisoner intended to steal. *Reg. v. Larves*, 1 C. & K. 62.

A. and B. were indicted for sacrilegiously breaking into a church and stealing a box and money:—Held, that the property was rightly laid in the vicar and others, in their individual names. *Reg. v. Wortley*, 1 Den. C. C. 162.

Breaking out.—An indictment for burglary stating in one count that the prisoner "did break to get out," and in another that he did break and get out was sufficient, since the 7 & 8 Geo. 4, c. 29, s. 11, which used the words break out. *Rex v. Compton*, 7 C. & P. 133.

Burglary and Striking.—An indictment on 7 Will. 4 & 1 Vict. c. 86, s. 2, for the capital offence of burglary and striking, must have charged both the burglary and the striking, and the proof must correspond with the indictment. *Reg. v. Parfitt*, 8 C. & P. 288.

A. was indicted for a burglary in the house of S. W., and striking D. James. The burglary was proved as laid, but the person struck was D. Jones:—Held, that the prisoner must be acquitted of the capital charge, and convicted of burglary only. *Ib.*

Intent to Commit Felony.—It must be alleged and proved either that a felony was committed in the dwelling-house, or that the party broke and entered with intent to commit some felony within the same. *Rex v. Dobbs*, 2 East, P. C. 513.

And whatever be the felony really intended, the same must be laid in the indictment and proved agreeably to the fact. *Rex v. Vanderecomb*, 2 East, P. C. 514, 517; 2 Leach, C. C. 708.

But the same fact may be laid with several in

tents. *Reg. v. Thompson*, 2 East, P. C. 515; 2 Leach, C. C. 1105, n.

An indictment for burglary, charging in one count an intent to steal the goods of the owner, and in another an intent to murder him, is good, for it is the same fact and evidence, only laid in different ways. *Ib.*

Against the form of the Statute.—The alterations made in the law with respect to burglary, by 7 Will. 4 & 1 Vict. c. 86, as to the hours, and as to the punishment, did not make it necessary for an indictment for that offence to conclude *contra formam statuti*, as the alteration with respect to the hours did not alter the offence, and the mere diminution of the punishment did not make that conclusion necessary. *Reg. v. Polly*, 1 C. & K. 77. See now 14 & 15 Vict. c. 100, s. 24.

11. EVIDENCE AND TRIAL.

For what Offence Prisoners may be Convicted.]

—On an indictment for burglary by breaking into a house in the night-time and stealing to the value of 5*l.* or more, the prisoner might be convicted of burglary, or of housebreaking, under 7 & 8 Geo. 4, c. 29, s. 12, or of stealing in a dwelling-house to the value of 5*l.* *Reg. v. Comp-ton*, 3 C. & P. 418.

On an indictment for burglary, the prisoner may be acquitted of the breaking, and found guilty of stealing in the dwelling-house. *Reg. v. Withal*, 1 Leach, C. C. 88; 2 East, P. C. 515, 517.

On an indictment for burglariously breaking and entering a dwelling-house (omitting the words "with intent to steal"), and then and there stealing goods therein, the prisoner may be well convicted of the burglary if the larceny be proved: secus if not. *Reg. v. Furnival*, R. & R. C. C. 445.

When the felony is laid to constitute the burglary, an acquittal of the burglary is an acquittal of stealing in the dwelling-house. *Reg. v. Comer*, 1 Leach, C. C. 36.

Where a party is indicted both for burglary and feloniously stealing in the dwelling-house, and is acquitted of the burglary, but found guilty of the stealing, the verdict should be entered thus: "Jury say not guilty of breaking and entering the dwelling-house in the night, but guilty of stealing (the property) in the dwelling-house." *Reg. v. Hungerford*, 2 East, P. C. 518; 1 Leach, C. C. 88.

— Indictment against Two Persons.—Upon an indictment for burglary and larceny against two, one may be found guilty of the burglary and larceny, and the other of the larceny only. *Reg. v. Butterworth*, R. & R. C. C. 520.

Day in Indictment not Proved.—If a prisoner is charged with a burglary and stealing the goods, the prosecutor, on failing to prove that these facts were committed on the day laid in the indictment, cannot be admitted to prove that the larceny was committed on a prior day. *Reg. v. Vandercorn*, 2 Leach, C. C. 708; 2 East, P. C. 519.

Impression of Shoe—When made not Proved.]

—In an indictment for burglary, the entry was proved to have been effected by breaking open a

window at the back of a house:—Held, that the correspondence of the prisoner's shoe with an impression in the front garden, not proved to have been made during that night, was not any evidence to go to the jury to show a connexion with such entry. *Reg. v. Coats*, 2 Cox, C. C. 188.

Possession of Goods as Evidence.—On the night following the commission of a burglary, two boys were found concealed in a corn-chest, in an open gig-house with which they were not in any way connected, and half a mile from the house of the prosecutor. Outside the corn-chest was found some of the stolen property, and on the loft over the gig-house was found another portion of the stolen property:—Held, that there was no evidence to go to the jury of possession by the boys of any of the stolen articles. *Ib.*

On a charge of burglary, possession by the prisoners of part of the stolen property very soon after the burglary, with an account given of it not reasonable or credible, is sufficient *prima facie* evidence, without express evidence to falsify it. It is so, however, only if, upon all the circumstances in the case, the account given is not reasonably credible. *Reg. v. Exall*, 4 F. & F. 922.

Other Offences of same Character.—Upon a trial for breaking into a booking-office at a railway station, evidence was admitted that the prisoners had, on the same night, broken into three other booking-offices belonging to three other stations on the same railway, the four cases being all mixed up together. *Reg. v. Cobden*, 3 F. & F. 833. See *Reg. v. Rearden*, 4 F. & F. 76.

X. COINING.

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1. STATUTE.

The 24 & 25 Vict. c. 99, consolidates the statute law of the United Kingdom against offences relating to the coin.

"Current Gold and Silver Coin."—By s. 1, in the interpretation of and for the purposes of the act, the expression "the Queen's current gold or silver coin" shall include any gold or silver coin coined in any of her Majesty's mints, or lawfully current, by virtue of any proclamation or otherwise, in any part of her Majesty's dominions, whether within the United Kingdom or otherwise.

"Copper Coin."—And the expression "the Queen's copper coin" shall include any copper coin and any coin of bronze or mixed metal coined in any of her Majesty's mints, or lawfully current, by virtue of any proclamation or otherwise, in any part of her Majesty's said dominions.

"False or Counterfeit Coin."—And the expression "false or counterfeit coin, resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin," shall include any of the current coin which shall have been gilt, silvered, washed, coloured, or eased over, or in any manner altered, so as to resemble or be apparently intended to resemble or pass for any of the Queen's current coin of a higher denomination.

"Current Coin."—And the expression "the Queen's current coin" shall include any coin coined in any of her Majesty's mints, or lawfully current, by virtue of any proclamation or otherwise, in any part of her Majesty's said dominions, and whether made of gold, silver, copper, bronze, or mixed metal.

Custody or Possession—What is.—And where the having any matter in the custody or possession of any person is mentioned in this act, it shall include, not only the having of it by himself in his personal custody or possession, but also the knowingly and wilfully having it in the actual custody or possession of any other person, and also the knowingly and wilfully having it in any dwelling-house or other building, lodging, apartment, field, or other place, open or inclosed, whether belonging to or occupied by himself or not, and whether such matter shall be so had for his own use or benefit or for that of any other person.

2. COUNTERFEITING AND UTTERING GOLD AND SILVER COIN.

Counterfeiting.—By 24 & 25 Vict. c. 99, s. 2, whosoever shall falsely make or counterfeit any coin resembling or apparently intended to resemble or pass for any of the Queen's current

gold or silver coin, shall, in England and Ireland, be guilty of felony, and in Scotland of a high crime and offence, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47); or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (Former provision, 2 & 3 Will. 4, c. 34, s. 3.)

Counterfeit Coin—What is.—A genuine sovereign had been fraudulently filed at the edges to such an extent as to reduce the weight by one twenty-fourth part, and to remove the milling entirely, or almost entirely, and a new milling had been added in order to restore the appearance of the coin:—Held, by Lord Coleridge, C.J., Pollock and Huddleston, B.B. (Lush and Stephen, J.J., dissenting), that the coin was false and counterfeit within 24 & 25 Vict. c. 99, s. 9. *Reg. v. Hermann*, 4 Q. B. D. 284; 48 L. J., M. C. 106; 40 L. T. 263; 27 W. R. 475.

To be made Abroad.—Some apparatus for manufacturing counterfeit coin was found in the prisoner's possession, but the jury found that he intended to make only a few counterfeit coins in England, with a view merely of testing the completeness of the apparatus before he sent it out to Peru.—Held, that even to make a few coins in England with that object would be to commit the offence of making counterfeit coins within the statute. *Reg. v. Roberts*, Dears. C. C. 539; 7 Cox, C. C. 39; 25 L. J., M. C. 17; 1 Jur., N. S. 1094.

Impression not Necessary.—It is not necessary, to constitute the offence of coining, that there should be an impression on the counterfeit, if it resembles the common worn coin. *Re v. Welch*, 1 East, P. C. 87, 164; 1 Leach, C. C. 364.

A counterfeit shilling produced in evidence, although it is quite smooth, and there is no impression of any sort discernible on it, will support an indictment for counterfeiting to the similitude of the legal coin. *Id.*

To make a round blank like the smooth shillings in circulation, the original impression on which has been effaced by wear, is counterfeiting to the likeness and similitude of the good legal and current coin of the realm called a shilling. *Re v. Wilson*, 1 Leach, C. C. 285.

To resemble real Coin—Question for Jury.—It is a question of fact whether or not counterfeit coin was made to resemble the real coin. *Re v. Welch*, 1 East, P. C. 87, 164; 1 Leach, C. C. 364.

Uttering.—By 24 & 25 Vict. c. 99, s. 9, whosoever shall tender, utter or put off any false or counterfeit coin, resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin, knowing the same to be false or counterfeit, shall, in England and Ireland, be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding one year, with or without hard labour, and with or without solitary confinement. (Similar to former provision, 2 & 3 Will. 4, c. 34, s. 7.)

By s. 10, whosoever shall tender, utter or put off any false or counterfeit coin, resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin, knowing the same to be false or counterfeit, and shall, at the time of such tendering, uttering or putting off, have in his custody or possession, besides the false or counterfeit coin so tendered, uttered or put off, any other piece of false or counterfeit coin, resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin, or shall, either on the day of such tendering, uttering or putting off, or within the space of ten days then next ensuing, tender, utter or put off any false or counterfeit coin, resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin, knowing the same to be false or counterfeit, shall, in England and Ireland, be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (Former provision, 2 & 3 Will. 4, c. 34, s. 7.)

By s. 11, whosoever shall have in his custody or possession three or more pieces of false or counterfeit coin, resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin, knowing the same to be false or counterfeit, and with intent to utter or put off the same or any of them, shall, in England and Ireland, be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for the term of five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

By s. 12, whosoever, having been convicted, either before or after the passing of this act, of any such misdemeanor, or crime and offence as in any of the last three preceding sections mentioned, or of any felony or high crime and offence against this or any former act relating to the coin, shall afterwards commit any of the misdemeanors or crimes and offences in any of the said sections mentioned, shall, in England and Ireland, be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

By s. 13, whosoever shall, with intent to defraud, tender, utter, or put off, as or for any of the Queen's current gold or silver coin, any coin not being such current gold or silver coin, or any medal or piece of metal or mixed metals resembling in size, figure, and colour the current coin as or for which the same shall be so tendered, uttered or put off, such coin, medal, or piece of metal or mixed metals so tendered, uttered, or put off being of less value than the current coin as or for which the same shall be so tendered, uttered or put off, shall, in England and Ireland, be guilty of a misdemeanor, and in Scotland of a crime and offence, and, being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding one year, with or without hard labour, and with or without solitary confinement.

— **What amounts to.**—A prisoner went into a shop, asked for some coffee and sugar, and in payment put down on the counter a counterfeit shilling; the prosecutor said that the shilling was a bad one; whereupon the prisoner quitted the shop, leaving the shilling and also the coffee and sugar.—Held, that this was an uttering and putting off within the statute. *Reg. v. Welch*, T. & M. 409; 2 Den. C. C. 78; 4 Cox, C. C. 430; 20 L. J., M. C. 101; 15 Jur. 136.

The giving of a piece of counterfeit money in charity is not an uttering, although the person may know it to be counterfeit; as in cases of this kind there must be some intention to defraud. *Reg. v. Page*, 8 C. & P. 122.

But where a person gave a counterfeit coin to a woman with whom he had shortly before had intercourse.—Held, an uttering. *Reg. v. —*, 1 Cox, C. C. 250.

Compare cases sub tit. FORGERY, infra.

— **Joint Uttering.**—If two utterers of counterfeit coin, with a general community of purpose, go different ways, and utter coin apart from each other, and not near enough to assist each other, their respective utterings are not joint utterings by both. *Reg. v. Manners*, 7 C. & P. 801.

If two jointly prepare counterfeit coin, and utter it in different shops, apart from each other, but in concert, and intending to share the proceeds, the utterings of each are the joint utterings of both, and they may be convicted jointly. *Reg. v. Hurse*, 2 M. & Rob. 360.

On an indictment for a joint uttering of counterfeit coin, where both are not present at the time of the uttering, the true question seems to be, whether the one was so near the other as to help the other to get rid of the counterfeit coin. *Reg. v. Jones*, 9 C. & P. 761; 2 M. C. C. 85; 2 Lewin, C. C. 119, 297.

Prisoners together uttered a bad half-crown. Shortly afterwards they separated, and one of them went to a shop and uttered another bad half-crown, and then the other went to the same shop and uttered a third bad half-crown; but at these second and third utterings neither was proved to have been near the other.—Held, that the proof of previous concert would not sustain a count for a joint uttering in either of the second or third utterings. *Reg. v. West*, 2 Cox, C. C. 237.

Persons privy to the uttering of a forged note, by previous concert with the utterer, but who were not present at the time of uttering or so near as to be able to afford any aid or assistance.—Held, not to be principals but accessories before the fact. *Reg. v. Soares*, R. & R. C. C. 25; 2 Ex. P. C. 974.

— **Joint Uttering and Possession of other Counterfeit Money.**—If two prisoners are indicted for uttering a counterfeit shilling, having another counterfeit shilling in their possession, it is not necessary to prove with certainty which of the pieces was the one uttered, and which was found on them unuttered, if both the pieces of the money are proved to be counterfeit. And if it appears that two prisoners went to a shop, and that one of them went in and uttered the bad money, having no more in her possession, and the other stayed outside the shop, having other bad pieces of money, both may be con-

victed, the uttering and the possession being both joint. *Rex v. Sherrett*, 2 C. & P. 427.

Where one of two persons in company utters counterfeit coin, and other counterfeit coin is found on the other person, they are jointly guilty of the aggravated offence under 2 & 3 Will. 4, c. 34, s. 7; if acting in concert, and both knowing of the possession. *Reg. v. Gerrish*, 2 M. & Rob. 219.

Where a man and woman were indicted for uttering a bad shilling to B., and having in their possession another bad shilling at the time, and the uttering was by the woman alone in the absence of the man:—Held, that the man was not liable to be convicted with the actual utterer, although proved to be the associate of the woman on the day of uttering, and to have had other bad money about him for the purpose of uttering; and, secondly, that the woman could not be convicted of the second offence of having other bad money in her possession, on the evidence of her associating with a man not present at the uttering, but having large quantities of bad money about him for the purpose of uttering. *Rex v. Else*, R. & R., C. C. 142. But see *Reg. v. Greenwood*, 5 Cox, C. C. 521; 2 Den. C. C. 453.

Indictment—Form of.]—In an indictment on 15 Geo. 2, c. 28, s. 3, it was not necessary to aver that the defendant was a common utterer of false money. *Rex v. Smith*, 2 B. & P. 127.

An indictment for knowingly uttering counterfeit coin, twice on the same day, charged an uttering of a counterfeit half-crown, and that the defendant, on the same day, “one other piece of false and counterfeit (omitting the word ‘coin’), resembling, and apparently intended to resemble, and pass for a piece of the Queen’s current silver coin, called a half-crown, unlawfully, &c., did utter and put off to one S. A., the wife of W. G., knowing the same to be false and counterfeit:”—Held, that the omission of the word “coin” did not render the indictment bad, as the words “false and counterfeit” might be rejected as surplusage, and the indictment would then be, “one other piece resembling, and apparently intended to resemble, and pass for a piece of the Queen’s current silver coin, called a half-crown.” *Reg. v. Jones*, 9 C. & P. 761.

An indictment, charging that the prisoner, one piece of counterfeit coin, &c. “did utter and put off to A., knowing the same to be false and counterfeit,” is good, whether the objection of uncertainty as to the time, &c., and in knowing, is taken before or after verdict. *Reg. v. Page*, 2 M. C. C. 219; 9 C. & P. 756.

A count charging the prisoner with having counterfeit money in his possession at the time he uttered other counterfeit money, must contain a distinct averment of the fact of uttering. *Rex v. Kelly*, 3 Esp. 28.

An indictment on 15 Geo. 2, c. 28, for uttering bad money by the common trick called “ringing the changes,” was good, although it did not state that it was uttered in payment as and for good and lawful money; for the words of the statute were in the disjunctive, utter or tender in payment. *Rex v. Franks*, 2 Leach, C. C. 644.

— Allegation of Scienter.]—An indictment for knowingly uttering counterfeit coin, charged that the prisoner “did utter and put off to one S. A., the wife of W. G., knowing the same to be

false and counterfeit:”—Held, that the allegation of the scienter was sufficient, and that the word “knowing” must be taken to apply to the prisoner, and not to “S. A. the wife of W. G.,” who was the last antecedent; and that the scienter must be taken to apply to the time of the uttering, although it was not stated to be “then and there.” *Reg. v. Jones*, 9 C. & P. 761.

An indictment for uttering counterfeit coin, knowing it to be counterfeit (after a previous conviction), charged, that the prisoner did utter a counterfeit half-crown to E. H., knowing the same to be false and counterfeit:—Held, that the allegation of the scienter was sufficient, and that the word “knowing” must be taken to apply to the prisoner, and not to E. H., who was the last antecedent, and that the scienter must be taken to apply to the time of the uttering, although it was not stated to be “then and there.” *Reg. v. Page*, 9 C. & P. 756; 2 M. C. C. 219.

Question for Jury—Whether Intention to Pass as good Coin.]—On an indictment under 2 & 3 Will. 4, c. 34, s. 7, for uttering a piece of false and counterfeit coin, apparently intended to resemble and pass for a piece of the Queen’s good and legal current coin, it is a question for the jury whether the coin produced supported the indictment, and if they should be of opinion that the coin was not intended by the maker to pass as a good coin, they should acquit. *Reg. v. Byrne*, 6 Cox, C. C. 475.

Evidence of Current Coin.]—A person was indicted for uttering a counterfeit coin, intended to resemble and pass for a groat. All the witnesses for the prosecution, except the inspector of coin for the mint, called it a fourpenny-piece. The inspector called it a groat, and said he believed that it had had that name from the earliest period. He added, that the original groat of Edward the Third’s reign was larger and heavier than the coin in question; and that, in the Queen’s proclamation, these coins were called both groats and fourpenny-pieces. The proclamation was not produced, and the inscription on the coin itself was fourpence:—Held, that if the jury, from their own knowledge of the English language, without considering any evidence at all, were of opinion that a groat and fourpenny-piece were the same, the prisoner was rightly indicted, and might be convicted. *Reg. v. Connell*, 1 C. & K. 190.

A person was indicted for uttering a medal resembling in size, figure, and colour one of the Queen’s current gold coins, called a half-sovereign. At the trial the medal was produced by a witness, who stated that it was the same in diameter as a half-sovereign, and somewhat similar in colour; that on the obverse was the head of the Queen similar to that on a half-sovereign, but that the legend was different; when about to describe the reverse, the coin accidentally dropped and was lost. The medal had not been shewn to the jury, and secondary evidence was not given of what was on the reverse:—Held, that there was evidence to go to the jury that the medal resembled in figure a current coin. *Reg. v. Robinson*, L. & C. 604; 10 Cox, C. C. 107; 34 L. J., M. C. 176; 11 Jnr., N. S. 452; 12 L. T. 501; 13 W. R. 727.

Evidence of Guilty Knowledge.]—On an indictment for uttering counterfeit coin, to prove

a guilty knowledge, evidence may be given of a subsequent uttering by the prisoner of counterfeit coin of a different denomination to that mentioned in the indictment. The difference in the denomination of the coin goes to the weight of evidence, but not to its admissibility. *Reg. v. Forster*, Dears. C. C. 456; 6 Cox, C. C. 521; 3 C. L. R. 681; 24 L. J., M. C. 134; 1 Jur., N. S. 407.

Sentence.—On a conviction of two separate offences of uttering counterfeit coin, in two counts, one judgment for two years' imprisonment, under 2 & 3 Will. 4, c. 34, s. 7, was bad. *Rea v. Robinson*, 1 M. C. C. 413.

3. COUNTERFEITING AND UTTERING COPPER COIN.

Counterfeiting.—By 24 & 25 Vict. c. 99, s. 14, *whosoever shall falsely make or counterfeit any coin, resembling or apparently intended to resemble or pass for any of the Queen's current copper coin; and whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall knowingly make or mend, or begin to proceed to make or mend, or buy or sell, or have in his custody or possession, any instrument, tool, or engine adapted and intended for the counterfeiting any of the Queen's current copper coin; or shall buy, sell, receive, pay, or put off, or offer to buy, sell, receive, pay, or put off any false or counterfeit coin, resembling or apparently intended to resemble or pass for any of the Queen's current copper coin, at or for a lower rate or value than the same imports, or was apparently intended to import, shall, in England and Ireland, be guilty of felony, and in Scotland of a high crime and offence, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years, and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (Former provision, 2 & 3 Will. 4, c. 34, s. 12.)*

Uttering.—By s. 15, *whosoever shall tender, utter or put off any false or counterfeit coin, resembling or apparently intended to resemble or pass for any of the Queen's current copper coin, knowing the same to be false or counterfeit, or shall have in his custody or possession three or more pieces of false or counterfeit coin, resembling or apparently intended to resemble or pass for any of the Queen's current copper coin, knowing the same to be false or counterfeit, and with intent to utter or put off the same or any of them, shall, in England and Ireland, be guilty of a misdemeanor, and in Scotland of a crime and offence, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding one year, with or without hard labour, and with or without solitary confinement.*

Before these Enactments.—Uttering or tendering in payment counterfeit copper money was not an indictable offence. *Rea v. Cirwan*, 1 East, P. C. 182.

4. COUNTERFEITING AND UTTERING FOREIGN COIN.

Counterfeiting Gold and Silver Coin.—By 24 & 25 Vict. c. 99, s. 18, *whosoever shall make or counterfeit any kind of coin, not being the Queen's current gold or silver coin, but resembling or apparently intended to resemble or pass for any gold or silver coin of any foreign prince, state, or country, shall, in England and Ireland, be guilty of felony, and in Scotland of a high crime and offence, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years, and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (Former provision, 37 Geo. 3, c. 126, s. 2.)*

— **Bringing into England.**—By s. 19, *whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall bring or receive into the United Kingdom any such false or counterfeit coin, resembling or apparently intended to resemble or pass for any gold or silver coin of any foreign prince, state, or country, knowing the same to be false or counterfeit, shall, in England and Ireland, be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years, and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (Former provision, 37 Geo. 3, c. 126, s. 3.)*

— **Uttering.**—By s. 20, *whosoever shall tender, utter, or put off any such false or counterfeit coin, resembling or apparently intended to resemble or pass for any gold or silver coin of any foreign prince, state, or country, knowing the same to be false or counterfeit, shall, in England and Ireland, be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding six months, with or without hard labour. (Former provision, 37 Geo. 3, c. 126, s. 4.)*

— **Second and Third Offences.**—By s. 21, *whosoever, having been so convicted as in the last preceding section mentioned, shall afterwards commit the like offence of tendering, uttering, or putting off any such false or counterfeit coin as aforesaid, knowing the same to be false or counterfeit, shall, in England and Ireland, be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement; and whosoever, having been so convicted of a second offence, shall afterwards commit the like offence of tendering, uttering, or putting off any such false or counterfeit coin as aforesaid, knowing the same to be false or counterfeit, shall, in England and Ireland, be guilty of felony, and in Scotland of a high crime and offence, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than*

five years (27 & 28 Vict. c. 47); or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Counterfeiting Copper Coin.—By s. 22, whosoever shall falsely make or counterfeit any kind of coin, not being the Queen's current coin, but resembling or apparently intended to resemble or pass for any copper coin, or any other coin made of any metal or mixed metals of less value than the silver coin of any foreign prince, state, or country, shall, in England and Ireland, be guilty of a misdemeanor, and in Scotland of a crime and offence, and, being convicted thereof, shall be liable, at the discretion of the court, for the first offence, to be imprisoned for any term not exceeding one year, and for the second offence, to be kept in penal servitude for any term not exceeding seven years, and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (Former provision, 43 Geo. 3, c. 139, s. 3.)

Unlawful Possession.—By s. 23, whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall have in his custody or possession any greater number of pieces than five pieces of false or counterfeit coin, resembling or apparently intended to resemble or pass for any gold or silver coin of any foreign prince, state, or country, or any such copper or other coin as in the last preceding section mentioned, shall, on conviction thereof before any justice of the peace, forfeit and lose all such false and counterfeit coin, which shall be cut in pieces and destroyed by order of such justice, and shall for every such offence forfeit and pay any sum of money not exceeding 40s., nor less than 10s. for every such piece of false and counterfeit coin which shall be found in the custody or possession of such person, one moiety to the informer, and the other moiety to the poor of the parish where such offence shall be committed; and in case any such penalty shall not be forthwith paid, it shall be lawful for any such justice to commit the person who shall have been adjudged to pay the same to the common gaol or house of correction, there to be kept to hard labour for the space of three months, or until such penalty shall be paid. (Former provisions, 37 Geo. 3, c. 126, s. 6, and 43 Geo. 3, c. 139, s. 6.)

5. COLOURING.

Statute.—By 24 & 25 Vict. c. 99, s. 3, whosoever shall gild or silver, or shall, with any wash or materials capable of producing the colour or appearance of gold or of silver, or by any means whatsoever, wash, ease over, or colour any coin whatsoever resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin; or shall gild or silver, or shall, with any wash or materials capable of producing the colour or appearance of gold or of silver, or by any means whatsoever, wash, ease over, or colour any piece of silver or copper, or of coarse gold or coarse silver, or of any metal or mixture of metals respectively, being of a fit size and figure to be coined, and with intent that the same shall be coined

into false and counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin; or shall gild, or shall, with any wash or materials capable of producing the colour or appearance of gold, or by any means whatsoever, wash, ease over, or colour any of the Queen's current silver coin, or file or in any manner alter such coin, with intent to make the same resemble or pass for any of the Queen's current gold coin; or shall gild or silver, or shall, with any wash or materials capable of producing the colour or appearance of gold or silver, or by any means whatsoever, wash, ease over, or colour any of the Queen's current copper coin, or file or in any manner alter such coin, with intent to make the same resemble or pass for any of the Queen's current gold or silver coin, shall, in England and Ireland, be guilty of felony, and in Scotland of a high crime and offence, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (Former provision, 2 & 3 Will. 4, c. 34, s. 4.)

What is a Colouring.—An indictment charging the gilding sixpences with materials capable of producing the colour of gold, is good, and supported by proof of colouring sixpences with gold. *Reg. v. Turner*, 2 M. C. C. 42.

Preparing blanks with such materials, as when rubbed would make them resemble the real coin, was a colouring within 8 & 9 Will. 3, c. 26, before the resemblance has been produced by such friction. *Reg. v. Case*, 1 East, P. C. 165; 1 Leach, C. C. 154, n.

So, bringing to the surface the latent silver in a blank of mixed metal, by dipping it in aquafortis, which corrodes the base metal, was a colouring within that statute. *Reg. v. Lavy*, 1 East, P. C. 166; 1 Leach, C. C. 153. And see *Reg. v. Harris*, 1 Leach, C. C. 135.

6. IMPAIRING OR LIGHTENING GOLD OR SILVER COIN.

Statute.—By 24 & 25 Vict. c. 99, s. 4, whosoever shall impair, diminish or lighten any of the Queen's current gold or silver coin, with intent that the coin so impaired, diminished or lightened may pass for the Queen's current gold or silver coin, shall, in England and Ireland, be guilty of felony, and in Scotland of a high crime and offence, and being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years, and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (Former provision, 2 & 3 Will. 4, c. 43, s. 5.)

7. BUYING OR SELLING COUNTERFEIT COIN.

Statute.—By 24 & 25 Vict. c. 99, s. 6, whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall buy, sell, receive, pay, or put off, or offer to buy, sell, receive, pay, or put off, any false or



counterfeit coin, resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin at or for a lower rate value than the same imports or was apparently intended to import, shall, in England and Ireland, be guilty of felony, and in Scotland of a high crime and offence, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Indictment—Averment as to Price.—And in any indictment for any such offence it shall be sufficient to allege that the party accused did buy, sell, receive, pay, or put off, or did offer to buy, sell, receive, pay, or put off, the false or counterfeit coin at or for a lower rate or value than the same imports or was apparently intended to import, without alleging at or for what rate, price or value the same was bought, sold, received, paid, or put off, or offered to be bought, sold, received, paid, or put off. (Former provisions, 8 & 9 Will. 3, c. 26, s. 6, and 2 & 3 Will. 4, c. 34, s. 6.)

An indictment on 8 & 9 Will. 3, c. 26, s. 6, stated that five counterfeit shillings were paid and put off for two shillings; the proof was that five bad shillings were sold for half-a-crown:—Held, that the variance was fatal, as it was a contract which must be correctly proved as laid. *Ree v. Joyce*, Car. C. L. 184.

In an indictment for putting off counterfeit money at a lower rate than its denomination imports, it was alleged that the prisoner put off a counterfeit sovereign and three counterfeit shillings for the sum of five shillings; the proof was, that the prisoner said he would let the witness have a bad sovereign at four shillings, and three bad shillings at one shilling, and the witness paid for them with two good half-crowns:—Held, that this proof supported the allegation. *Ree v. Hodges*, 3 C. & P. 410.

—“**Not Cut in Pieces.**”—An indictment on 8 & 9 Will. 3, c. 26, s. 6, for putting off bad money, must have stated that it was “not cut in pieces.” *Ree v. Palmer*, 1 Leach, C. C. 102.

—**Names of Persons.**—In an indictment for putting off counterfeit money, the names of the persons to whom it was put off ought to be set out. *Anon.*, 1 East, P. C. 180.

Putting off, what is.—Where, on a bargain for the sale of counterfeit money, the price had been agreed upon and the prisoner had produced the coin, but the complete transfer was prevented by the appearance of the police officers:—Held, that it did not amount to a putting off within 8 & 9 Will. 3, c. 26. *Ree v. Woodridge*, 1 Leach, C. C. 307; 1 East, P. C. 169.

8. EXCHANGING COIN AT HIGHER THAN ITS VALUE.

The exchanging guineas for bank-notes, taking the guineas in such exchange at a higher value than they were current for by the king's proclamation, was not an offence against 5 & 6 Edw. 6,

c. 19. (Repealed by 56 Geo. 3, c. 68.) *Ree v. De Yonge*, 14 East, 402.

9. IMPORTING OR EXPORTING COUNTERFEIT COIN.

Importing.—By 24 & 25 Vict. c. 99, s. 7, whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall import or receive into the United Kingdom, from beyond the seas, any false or counterfeit coin, resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin, knowing the same to be false or counterfeit, shall, in England and Ireland, be guilty of felony, and in Scotland of a high crime and offence, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (Former provision, 2 & 3 Will. 4, c. 34, s. 6.)

Exporting.—By s. 8, whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall export, or put on board any ship, vessel, or boat for the purpose of being exported from the United Kingdom, any false or counterfeit coin, resembling or apparently intended to resemble or pass for any of the Queen's current coin, knowing the same to be false or counterfeit, shall, in England and Ireland, be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

10. DEFACING GOLD, SILVER OR COPPER COIN.

Statute.—By 24 & 25 Vict. c. 99, s. 16, whosoever shall deface any of the Queen's current gold, silver, or copper coin, by stamping thereon any names or words, whether such coin shall or shall not be thereby diminished or lightened, shall, in England and Ireland, be guilty of a misdemeanor, and in Scotland of a crime and offence, and, being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding one year, with or without hard labour. (Former provision, 16 & 17 Vict. c. 102, s. 1.)

By s. 17, no tender of payment in money made in any gold, silver, or copper coin so defaced by stamping as in the last preceding section mentioned shall be allowed to be a legal tender; and whosoever shall tender, utter or put off any coin so defaced shall, on conviction thereof before two justices, be liable to forfeit and pay any sum not exceeding 40s.: provided that it shall not be lawful for any person to proceed for any such last-mentioned penalty without the consent, in England or Ireland, of her Majesty's attorney-general for England or Ireland respectively, or in Scotland of the lord advocate. (Former provision, 16 & 17 Vict. c. 102, s. 2.)

11. TESTING GENUINENESS OF GOLD OR SILVER COIN.

Statute.—By 24 & 25 Vict. c. 99, s. 26, where

any coin shall be tendered as the Queen's current gold or silver coin to any person who shall suspect the same to be diminished otherwise than by reasonable wearing, or to be counterfeit, it shall be lawful for such person to cut, break, bend, or deface such coin, and if any coin so cut, broken, bent, or defaced shall appear to be diminished otherwise than by reasonable wearing, or to be counterfeit, the person tendering the same shall bear the loss thereof; but if the same shall be of due weight, and shall appear to be lawful coin, the person cutting, breaking, bending, or defacing the same is hereby required to receive the same at the rate it was coined for; and if any dispute shall arise whether the coin so cut, broken, bent, or defaced be diminished in manner aforesaid, or counterfeit, it shall be heard and finally determined in a summary manner by any justice of the peace, who is empowered to examine upon oath as well the parties as any other person, in order to the decision of such dispute; and the tellers at the receipt of her Majesty's Exchequer, and their deputies and clerks, and the receivers-general of every branch of her Majesty's revenue, are hereby required to cut, break, or deface, or cause to be cut, broken, or defaced, every piece of counterfeit or unlawfully diminished gold or silver coin which shall be tendered to them in payment of any part of her Majesty's revenue. (Former provision, 2 & 3 Will. 4, c. 34, s. 13.)

12. IMPLEMENTS FOR COINING.

Statute.—By 24 & 25 Vict. c. 99, s. 24, *who-soever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall knowingly make or mend, or begin or proceed to make or mend, or buy or sell, or have in his custody or possession, any puncheon, counter puncheon, matrix, stamp, die, pattern, or mould in or upon which there shall be made or impressed, or which will make or impress, or which shall be adapted and intended to make or impress, the figure, stamp, or apparent resemblance of both or either of the sides of any of the Queen's current gold or silver coin, or of any coin of any foreign prince, state, or country, or any part or parts of both or either of such sides; or shall make or mend, or begin or proceed to make or mend, or shall buy or sell, or have in his custody or possession, any edge, edging, or other tool, collar, instrument, or engine adapted and intended for the marking of coin round the edges with letters, grainings, or other marks or figures apparently resembling those on the edges of any such coin as in this section aforesaid, knowing the same to be so adapted and intended as aforesaid; or shall make or mend, or begin or proceed to make or mend, or shall buy or sell, or have in his custody or possession, any press for coining, or any cutting engine for cutting by force of a screw or of any other contrivance, round blanks out of gold, silver, or other metal or mixture of metals, or any other machine, knowing such press to be a press for coining, or knowing such engine or machine to have been used, or to be intended to be used, for or in order to the false making or counterfeiting of any such coin as in this section aforesaid, shall, in England and Ireland, be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five*

years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour and with or without solitary confinement. (Former provisions, 2 & 3 Will. c. 34, s. 10, and 8 & 9 Will. 3, c. 26.)

Machine, what is.—A galvanic battery is a machine within the meaning of the 24 & 25 Vict. c. 99, s. 24. *Reg. v. Grover*, 9 Cox, C. C. 282.

Press.—A press for coining was a tool or an instrument within that branch of the 8 & 9 Will. 3, c. 26, which made it treason to have the same knowingly in the party's custody. *Reg. v. Bell*, 1 East, P. C. 169.

Puncheon.—So having knowingly in possession a puncheon for the purpose of coining, though that alone, without the counter puncheon, would not make the figure. *Reg. v. Ridgeley*, 1 East, P. C. 171; 1 Leach, C. C. 189.

Collar.—So a collar of iron, for graining the edges of counterfeit money, was an instrument, although it was to be used in a coining press. *Reg. v. Moore*, 2 C. & P. 235; 1 M. C. C. 122.

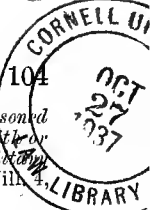
Mould.—So a mould of lead, having the stamp of one side of a shilling, was a tool or an instrument. *Reg. v. Lennard*, 2 W. Bl. 807; 1 Leach, C. C. 90; 1 East, P. C. 170.

Misdemeanor at Common Law.—It is a misdemeanor at common law to have tools for coining in possession with intent to use them. *Reg. v. Sutton*, 1 East, P. C. 172.

Being in possession of Dies.—A., with the intent of coining counterfeit half dollars of Peru, procured dies in this country for stamping and imitating such coin. He was apprehended before he had obtained the metal and chemical preparations necessary for making counterfeit coin:—Held, that the procuring of dies was an act in furtherance of the criminal purpose, sufficiently proximate to the offence intended, and sufficiently evidencing the criminal intent, to support an indictment founded on it for a misdemeanor, although the same facts would not have supported an indictment for attempting to make counterfeit coin. *Reg. v. Roberts*, Dears. C. C. 539; 7 Cox, C. C. 39; 25 L. J., M. C. 17; 1 Jur., N. S. 1094.

Indictment—Form of.—An indictment that the prisoner feloniously had in his possession a mould, "upon which mould were made and impressed the figure and apparent resemblance" of the obverse side of a sixpence, is bad, as not sufficiently showing that the impression was on the mould at the time when the prisoner had it in his possession; but a fresh indictment, with the words "then and there" before the words "made and impressed" is good. *Reg. v. Richmond*, 1 C. & K. 240; 1 Cox, C. C. 9.

Where a coining mould is made and impressed to resemble the obverse of a coin, which is partly defaced by wear, the indictment should be in the form above mentioned, as the words of the 2 & 3 Will. 4, c. 34, s. 10, as to moulds to resemble part of the obverse of a coin, relate to cases where several moulds put together would make the obverse of the coin. *Id.*



On an indictment on 2 & 3 Will. 4, c. 34, s. 10, for the felony of making a mould "intended to make and impress the figure and apparent resemblance of the obverse side" of a shilling, it was sufficient to prove that the prisoner made the mould and a part of the impression, though he had not completed the entire impression. *Ree v. Foster*, 7 C. & P. 495.

To convict a prisoner under the 2 & 3 Will. 4, c. 34, s. 10, of the felony of having in his possession a mould, upon which was impressed the resemblance or the obverse side of a shilling, the jury must be satisfied that, at the time he had it in his possession, the whole of the obverse side of the shilling was impressed on the mould: a part is not sufficient. *Id.*

On an indictment for having in possession a die made of iron and steel, proof of a die made of other material, or of both, will be sufficient: for it is immaterial to the offence of what the die is made. *Ree v. Oxford, R. & R. C. C.* 382.

Upon an indictment against a party under 2 & 3 Will. 4, c. 34, s. 10, for having in his possession a mould, upon which was made and impressed the figure, on one of the sides, of a shilling, it was not sufficient to shew that the prisoner had in his possession a mould, on one side of which there was a perfect impression, but without a channel through which the metal ran, unless it could also be shewn that coin could be made by it. *Reg. v. MacMillan*, 1 Cox, C. C. 41.

An indictment under 24 & 25 Vict. c. 99, s. 24, alleged that the prisoner "knowingly and without lawful excuse feloniously" had in his possession dies impressed with the resemblance of the sides of a sovereign. The prisoner ordered dies, impressed with the resemblance of the sides of a sovereign, of the maker. The maker gave information to the police, who communicated with the authorities of the Mint. The latter authorities, through the police, gave the maker permission to give them to the prisoner. He did so, and they were found in his possession:—Held, first, that it was necessary in the indictment to negative lawful authority or excuse, notwithstanding that the burden of proof lay upon the accused. *Reg. v. Harvey*, 1 L. R., C. C. 284; 40 L. J., M. C. 63; 23 L. T. 856; 19 W. R. 446; 11 Cox, C. C. 662.

Held, secondly, that the word "excuse" includes "authority," and therefore the indictment was good. *Id.*

Held, thirdly, that there was no evidence of lawful authority or excuse. *Id.*

Guilty Knowledge.—Held, fourthly, that the prisoner, being knowingly in possession of the dies, had a sufficient guilty knowledge to constitute a felony, whatever his intention as to their use might be. *Id.*

Evidence to connect Mould with Coin passed.—The prisoner was indicted for knowingly and without lawful excuse having in his custody and possession a mould on which were impressed the figure and apparent resemblance of the obverse side of a half-crown. The mould was found in the house of the prisoner, who had previously passed a bad half-crown; but there was no evidence to shew that the half-crown had been in the mould:—Held, that there was sufficient evidence to go to the jury. *Reg. v. Weeks*, L. & C.

18; 8 Cox, C. C. 455; 30 L. J., M. C. 141; 7 Jur., N. S. 472; 4 L. T., 373; 9 W. R. 553.

13. UNLAWFUL POSSESSION OF BASE COIN, FILINGS, OR CLIPPINGS.

Statute.—By 24 & 25 Vict. c. 99, s. 5, *whosoever shall unlawfully have in his custody or possession any filings or clippings, or any gold or silver bullion, or any gold or silver in dust, solution, or otherwise, which shall have been produced or obtained by impairing, diminishing, or lightening any of the Queen's current gold or silver coin, knowing the same to have been so produced or obtained, shall, in England and Ireland, be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years, and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.*

By s. 11, *whosoever shall have in his custody or possession three or more pieces of false or counterfeit coin, resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin, knowing the same to be false or counterfeit, and with intent to utter or put off the same or any of them, shall, in England and Ireland, be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for the term of five years, or to be imprisoned for any term not exceeding two years (27 & 28 Vict. c. 47), with or without hard labour, and with or without solitary confinement. (Former provision, 2 & 3 Will. 4, c. 34, s. 8.)*

Possession by Agent.—In order to convict a person charged on 2 & 3 Will. 4, c. 34, s. 8, with having in his possession more than three pieces of counterfeit coin, with intent to utter them, it was not necessary that the possession should be an individual possession, but it was enough if the coin was in the possession of the person so charged, or his immediate agent. *Reg. v. Williams*, Car. & M. 259. See also 24 & 25 Vict. c. 99, s. 1, *ante*, col. 91.

Joint Possession.—When pieces of counterfeit coin are found on one of two persons, acting in guilty concert, and both knowing of the possession, both are guilty. *Reg. v. Rogers*, 2 M. C. C. 85; 2 Lewin, C. C. 119, 297.

Evidence of Guilty Knowledge.—Having a large quantity of counterfeit coin in possession, many of each sort being of the same date, and made in the same mould, and each piece being wrapped in a separate piece of paper, and the whole distributed in different pockets of the dress, is some evidence that the possessor knew that the coin was counterfeit, and intended to utter it. *Reg. v. Jarvis*, Dears. C. C. 552; 7 Cox, C. C. 532; 25 L. J., M. C. 30; 1 Jur., N. S. 1114.

Possession of bad money five days after, may be given in evidence to shew guilty knowledge. *Harrison's case*, 2 Lewin, C. C. 118.

Having in possession a large quantity of base coin is evidence of having procured it with intent to utter it, unless there are other circumstances

to induce a belief that the defendant was the maker. *Rea v. Fuller*, R. & R. C. C. 308.

Offences under Old Statutes and Common Law.—Having counterfeit silver in possession, with intent to utter it as good, was no offence before 2 & 3 Will. 4, c. 34, s. 8. *Rea v. Heath*, R. & R. C. C. 184; *S. P.*, *Rea v. Stewart*, R. & R. C. C. 288.

Procuring base coin with intent to utter it as good, is a misdemeanor. *Rea v. Fuller*, R. & R. C. C. 308.

Having the possession of counterfeit money, with intention to pay it away as for good money, was an indictable offence at common law. *Rea v. Parker*, 1 Leach, C. C. 41.

14. WHEN OFFENCE COMPLETE.

Statute.—By 24 & 25 Vict. c. 99, s. 80, every offence of falsely making or counterfeiting any coin, or of buying, selling, receiving, paying, tendering, uttering or putting off, or of offering to buy, sell, receive, pay, utter or put off, any false or counterfeit coin, against the provisions of this act, shall be deemed to be complete, although the coin so made or counterfeited, or bought, sold, received, paid, tendered, uttered or put off, or offered to be bought, sold, received, paid, uttered or put off, shall not be in a fit state to be uttered, or the counterfeiting thereof shall not be finished or perfected.

Forging the impression of money on an irregular piece of metal, without finishing it, so as to make it current, was an incomplete crime, and not high treason. *Rea v. Varley*, 2 W. Bl. 682; 1 Leach, C. C. 71, 253; 1 East, P. C. 164.

15. CONVEYING COINING TOOLS OR COIN FROM THE MINT WITHOUT AUTHORITY.

Statute.—By 24 & 25 Vict. c. 99, s. 25, whoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall knowingly convey out of any of her Majesty's mints any punchcon, counter punchcon, matrix, stamp, die, pattern, mould, edger, edging or other tool, collar, instrument, press or engine used or employed in or about the coining of coin, or any useful part of any of the several matters aforesaid, or any coin, bullion, metal or mixture of metals, shall, in England and Ireland, be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

16. EVIDENCE.

Statute.—By 24 & 25 Vict. c. 99, s. 29, where, upon the trial of any person charged with any offence against this act, it shall be necessary to prove that any coin produced in evidence against such person is false or counterfeit, it shall not be necessary to prove the same to be false and counterfeit by the evidence of any manager, or other officer of her Majesty's mint, but it shall be sufficient to prove the same to be false or counterfeit by the evidence of any other credible witness. (Former provision, 2 & 3 Will. 4, c. 34, s. 17.)

The usual practice is to call, as a witness, a silversmith of the town where the trial takes place, who examines the coin in court in the presence of the jury. *Davis's C. L.* 235.

17. PREVIOUS CONVICTION.

Indictment.—By 24 & 25 Vict. c. 99, s. 37, where any person shall have been convicted of any offence against this act, or any former act relating to the coin, and shall afterwards be indicted for any offence against this act committed subsequent to such conviction, it shall be sufficient in any such indictment, after charging such subsequent offence, to state the substance and effect only (omitting the formal part) of the indictment and conviction for the previous offence;

Certificate and Proof of Conviction.—And a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for the previous offence, purporting to be signed by the clerk of the court, or other officer having or purporting to have the custody of the records of the court where the offender was first convicted, or by the deputy of such clerk or officer, shall, upon proof of the identity of the person of the offender, be sufficient evidence of the previous conviction, without proof of the signature or official character or authority of the person appearing to have signed the same, or of his custody or right to the custody of the records of the court; and for every such certificate a fee of 6s. 8d., and no more, shall be demanded or taken;

Arraignment and Trial.—And the proceedings upon any indictment for committing any offence after a previous conviction or convictions shall be as follows; that is to say, the offender shall, in the first instance, be arraigned upon so much only of the indictment as charges the subsequent offence; and if he plead not guilty, or if the court order a plea of not guilty to be entered on his behalf, the jury shall be charged, in the first instance, to inquire concerning such subsequent offence only; and if they find him guilty, or if on arraignment he plead guilty, he shall then, and not before, be asked whether he had been previously convicted, as alleged in the indictment; and if he answer that he had been so previously convicted, the court may proceed to sentence him accordingly; but if he deny that he had been so previously convicted, or stand mute of malice, or will not answer directly to such question, the jury shall then be charged to inquire concerning such previous conviction or convictions; and in such case it shall not be necessary to swear the jury again, but the oath already taken by them shall for all purposes be deemed to extend to such last-mentioned inquiry;

Evidence of Good Character.—Provided that if, upon the trial of any person for any such subsequent offence, such person shall give evidence of his good character, it shall be lawful for the prosecutor, in answer thereto, to give evidence of the conviction of such person for the previous offence or offences before such verdict of guilty shall be returned, and the jury shall inquire concerning such previous conviction or conviction;

tions at the same time that they inquire concerning such subsequent offence.

Previous Conviction as Proof of Guilty Knowledge.]—On an indictment for uttering a counterfeit coin after a previous conviction, such previous conviction for uttering false coin cannot be put in evidence for the purpose of proving guilty knowledge. *Reg. v. Goodwin*, 10 Cox, C. C. 534.

— Must not be Inquired into.]—Upon the trial of an indictment for the felony of having committed a misdemeanor within either of sections 9, 10 or 11 of 24 & 25 Vict. c. 99, relating to the unlawful possession and uttering of counterfeit coin after a previous conviction for a misdemeanor within those sections: the prisoner must be arraigned upon the subsequent offence, and evidence respecting it must first be submitted to the jury, and the previous conviction must not be inquired into until after the verdict on the charge of the subsequent offence. *Reg. v. Martin*, 1 L. R., C. C. 214; 39 L. J., M. C. 31; 21 L. T. 469; 18 W. R. 72.

Previous Conviction Negated.]—A man was indicted under 24 & 25 Vict. c. 99, s. 12, for the felony of uttering counterfeit coin after a previous conviction for a like offence. The jury found him guilty of the uttering, but negated the previous conviction:—Held, that he could not be convicted of the misdemeanor of uttering. *Reg. v. Thomas*, 2 L. R., C. C. 141; 44 L. J., M. C. 42; 31 L. T. 849; 23 W. R. 344.

18. VALIDITY OF CONVICTIONS AND COMMITMENTS.

Statute.]—By 24 & 25 Vict. c. 99, s. 32, no conviction for any offence punishable on summary conviction under this act shall be quashed for want of form, or be removed by certiorari into any of her Majesty's superior courts of record; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a valid conviction to sustain the same.

19. POWER TO SEIZE COUNTERFEIT COIN AND COINING TOOLS.

(24 & 25 Vict. c. 99, s. 27.)

(Former provisions, 2 & 3 Will. 4, c. 34, s. 14, and 37 Geo. 3, c. 126, s. 7, and 43 Geo. 3, c. 139, s. 7.)

20. APPREHENSION OF OFFENDERS.

Statute.]—By 24 & 25 Vict. c. 99, s. 31, it shall be lawful for any person whatsoever to apprehend any person who shall be found committing any indictable offence, or any high crime and offence, or crime and offence, against this act, and to convey or deliver him to some peace officer, constable or officer of police, in order to his being conveyed as soon as reasonably may be before a justice of the peace or some other proper officer, to be dealt with according to law.

21. PROSECUTION AND TRIAL OF OFFENDERS.

Venue.]—By 24 & 25 Vict. c. 99, s. 28, where

any person shall tender, utter, or put off any false or counterfeit coin in one county or jurisdiction, and shall also tender, utter, or put off any other false or counterfeit coin in any other county or jurisdiction, either on the day of such first-mentioned tendering, uttering, or putting off, or within the space of ten days next ensuing, or where two or more persons, acting in concert in different counties or jurisdictions, shall commit any offence against this act, every such offender may be dealt with, indicted, tried, and punished, and the offence laid and charged to have been committed, in any one of the said counties or jurisdictions, in the same manner in all respects as if the offence had been actually and wholly committed within such one county or jurisdiction.

On the High Seas.]—By s. 36, all indictable offences mentioned in this act, which shall be committed within the jurisdiction of the Admiralty of England or Ireland, shall be deemed to be offences of the same nature, and liable to the same punishments, as if they had been committed upon the land in England or Ireland, and may be dealt with, inquired of, tried, and determined in any county or place in England or Ireland in which the offender shall be apprehended or be in custody, in the same manner in all respects as if the same had been actually committed in that county or place, and in any indictment for any such offence, or for being accessory to any such offence, the venue in the margin shall be the same as if such offence had been committed in such county or place, and the offence itself shall be averred to have been committed "on the high seas;" provided that nothing herein contained shall alter or affect any of the laws relating to the government of her Majesty's land or naval forces.

On Summary Convictions.]—By s. 41, every offence hereby made punishable on summary conviction may be prosecuted in England in the manner directed by 11 & 12 Vict. c. 43, and may be prosecuted in Ireland before two or more justices of the peace, or one metropolitan or stipendiary magistrate, in the manner directed by 14 & 15 Vict. c. 93, or in such other manner as may be directed by any act that may be passed for like purposes; and all provisions contained in the said acts shall be applicable to such prosecutions in the same manner as if they were incorporated in this act: provided that nothing in this act contained shall in any manner alter or affect any enactment relating to procedure in the case of any offence punishable on summary conviction within the city of London or the metropolitan police district, or the recovery or application of any penalty or forfeiture for any such offence.

22. PUNISHMENT.

(24 & 25 Vict. c. 99, s. 35.)

23. COSTS OF PROSECUTION.

Statute.]—By 24 & 25 Vict. c. 99, s. 42, in all prosecutions for any offence against this act in England which shall be conducted under the direction of the solicitors of her Majesty's Treasury, the court before which such offence shall be prosecuted or tried shall allow the expenses of the prosecution in all respects as in cases of

felony; and in all prosecutions for any such offence in England which shall not be so conducted, it shall be lawful for such court, in case a conviction shall take place, but not otherwise, to allow the expenses of the prosecution in like manner; and every order for the payment of such costs shall be made out, and the sum of money mentioned therein paid and repaid, upon the same terms and in the same manner in all respects as in cases of felony.

24. ACTIONS AGAINST PERSONS ACTING IN PURSUANCE OF THE STATUTE.

By 24 & 25 Vict. c. 99, s. 33, *all actions and prosecutions to be commenced against any person for anything done in pursuance of this act shall, in England or Ireland, be laid and tried in the county where the fact was committed, and shall, in England, Ireland, or Scotland, be commenced within six months after the fact committed, and not otherwise; and notice in writing of such action, and of the cause thereof, shall be given to the defendant one month at least before the commencement of the action;*

And in any such action brought in England or Ireland the defendant may plead the general issue, and give this act and the special matter in evidence, at any trial to be had thereupon;

And no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into court after such action brought, by or on behalf of the defendant, and if in England or Ireland a verdict shall pass for the defendant, or the plaintiff shall become nonsuit, or discontinue any such action after issue joined, or if, upon demurrer or otherwise, judgment shall be given against the plaintiff, in every such case the defendant shall recover his full costs as between attorney and client, and have the like remedy for the same as any defendant has by law in other cases; and though a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant unless the judge before whom the trial shall be shall certify his approbation of the action.

In order to entitle a party to a notice of action for a thing done in pursuance of this statute, it is enough that he honestly and bona fide believes he is acting in pursuance of the act, whether there is reasonable ground for such belief or not. *Herman v. Seneschal*, 13 C. B., N. S. 392; 32 L. J., C. P. 43; 6 L. T. 646; 11 W. R. 184.

XI. CONCEALMENT OF THE BIRTH OF CHILDREN.

1. *Statute.*
2. *Cases Decided thereon*, 112.
3. *Cases Decided before the passing of the Statute*, 113.
4. *Indictment*, 115.

1. STATUTE.

By 24 & 25 Vict. c. 100, s. 60, *if any woman shall be delivered of a child, every person who shall, by any secret disposition of the dead body of the said child, whether such child died before,*

at, or after its birth, endeavour to conceal the birth thereof, shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour; provided that if any person tried for the murder of any child shall be acquitted thereof, it shall be lawful for the jury by whose verdict such person shall be acquitted to find, in case it shall so appear in evidence, that the child had recently been born, and that such person did, by some secret disposition of the dead body of such child, endeavour to conceal the birth thereof, and thereupon the court may pass such sentence as if such person had been convicted upon an indictment for the concealment of the birth. (Former provision, 9 Geo. 4, c. 31, ss. 14, 31. The 9 Geo. 4, c. 31, repealed 43 Geo. 3, c. 58.)

2. CASES DECIDED THEREON.

What is a "Child."—On an indictment for concealing the birth of her child, it appeared that the prisoner had been confined of a child which had not attained to seven months from conception, it had never lived, and was slightly malformed; it was left to the jury to say whether the offspring had so far matured as to become a child, or was only a foetus, or the unformed subject of a premature miscarriage. *Reg. v. Hewett*, 4 F. & F. 1101.

A foetus not bigger than a man's finger, but having the shape of a child, is a child within the statute. *Reg. v. Culmer*, 9 Cox, C. C. 506.

Concealment of Birth, what is.]—A woman put the dead body of her child over a wall which was four-and-a-half feet high, and divided a yard from a field. The yard was at the back of a public-house, and entered from the street by a narrow passage. She did not live at the public-house, and must have carried the body from the street up the passage to the yard. The field was grazed by the cattle of a butcher, and the only entrance to it was through a gate leading from the butcher's own yard. There was no path through the field, and a person in the field could only see the body in case they went up to the wall, close against which the body lay. A little girl, picking flowers in the field, found the body of the child, twenty yards from the gate. There was nothing on or over the body to conceal it:—Held, that there was evidence of a secret disposition of the dead body of the child, and a conviction for endeavouring to conceal the birth of the child, by secretly disposing of its dead body, was confirmed. *Reg. v. Brown*, 1 L. R., C. C. 244; 39 L. J., M. C. 94; 22 L. T. 484; 18 W. R. 792.

Although the fact of the mother having placed the dead body of her newly-born child in an unlocked box is not of itself sufficient evidence of concealment of birth, yet all the attendant circumstances of the case must be taken into consideration, in order to determine whether or not an offence has been committed. *Reg. v. Cook*, 21 L. T. 216.

Leaving the dead body of a child in two boxes, closed, but not locked or fastened, one being placed inside the other in a bedroom, but in such a position as to attract the attention of those who daily resorted to the room, is not a

secret disposition of the body within 24 & 25 Vict. c. 100, s. 60. *Reg. v. George*, 11 Cox, C. C. 41.

On an indictment against the mother for concealment of the birth of her illegitimate child, it appeared that the body of the child was found, three days after it was born, behind the door of the privy belonging to the house where she lived as a domestic servant, in a tub covered over with a small cloth:—Held, that there was no conclusive evidence to warrant the jury in finding a verdict for concealment of the birth. *Reg. v. Opie*, 8 Cox, C. C. 332.

To endeavour to conceal the birth of a child by a secret disposition of the dead body within 24 & 25 Vict. c. 100, s. 60, it must be by putting it into some place where it is not likely to be found. Placing it in an open box in the prisoner's bedroom, and afterwards, on inquiry by the medical man, informing him that the child was in the box, where it was found, is not a secret disposition. *Reg. v. Sleep*, 9 Cox, C. C. 559.

A woman, delivered of a child born alive, endeavoured to conceal the birth by depositing the child, while alive, in the corner of a field, leaving the infant to die from exposure, which it did, and the dead body was afterwards found in the corner:—Held, that she could not be convicted of concealing the birth of the child under 24 & 25 Vict. c. 100, s. 60, which relates to the secret disposition of the dead body of a child. *Reg. v. May*, 10 Cox, C. C. 448; 16 L. T. 362; 15 W. R. 751.

Question for Judge and Jury.—On an indictment for secretly disposing of the dead body of a bastard child, with intent to conceal its birth, it is a question of law for the judge, whether there has been a secret disposing of the body, i.e. a disposing of it in such a place as that the offence may have been committed (and a dust-bin is such a place); but it is for the jury to say whether there has been such a disposing of the body by the prisoner with such an intent, and the jury must be satisfied that the prisoner so disposed of it, or was a party to such a disposition of it, with intent. *Reg. v. Clarke*, 4 F. & F. 1040.

Evidence—Dead Body must be Found.—In order to convict a woman of attempting to conceal the birth of her child a dead body must be found, and identified as that of the child of which she is alleged to have been delivered. *Reg. v. Williams*, 11 Cox, C. C. 684.

Mere proof that a woman was delivered of a child, and allowed two others to take away its body, is insufficient to sustain an indictment against her for concealment of its birth. *Reg. v. Bate*, 11 Cox, C. C. 686.

On an indictment for endeavouring to conceal the birth of a child "by a secret disposition of the dead body of the said child," the evidence for the prosecution having failed to prove the death of the child, the conviction was quashed. *Reg. v. Bell*, 8 Ir. R., C. L. 541.

3. CASES DECIDED BEFORE THE PASSING OF THE STATUTE.

What is a "Child."—On a charge of concealment of birth, it must appear that the child had gone such a time in its mother's womb that it

would, in the ordinary course of things, when born, have had a fair chance of life. Under seven months it may be fairly presumed that it would not be born alive. *Reg. v. Berriman*, 6 Cox, C. C. 388.

Purpose of Old Statute.—The concealment sought to be checked by 9 Geo. 4, c. 31, s. 14, was that which would keep the world at large in ignorance of the birth of a child. *Reg. v. Morris*, 3 Cox, C. C. 489.

While, therefore, the offence may on the one hand be committed, even though the pregnancy and delivery be made known to a confidant, so on the other it is not an offence within the act if the endeavour to conceal proceed from a desire to escape individual observation or anger. Where, therefore, it appeared that the body of a bastard child would have been buried by the prisoner in the churchyard, but for her fear to provoke her father, under the operation of which she conveyed it secretly to a pond:—Held, that the case did not fall within the act. *Id.*

What is Evidence of Concealment of Birth.—On an indictment against the mother for the murder of her illegitimate child, it appeared that the body of the child was found, a few hours after its birth, on the floor of an attic in a house where she lived as domestic servant, the head severed from the body, and both lying in sheets which had been removed from the bedroom below, which was occupied by the prisoner and her mistress, and where there was evidence to shew that the birth had taken place, but it was doubtful whether the severance of the head from the body was effected there or in the attic:—Held, that there was no evidence to warrant the jury in finding a verdict for the statutory misdemeanor of endeavouring to conceal the birth. *Reg. v. Goode*, 6 Cox, C. C. 318.

The mother of a child, of which she had been recently delivered, with the intention of concealing the dead body of the child from a surgeon, placed it under a bolster on which she laid her head. It was assumed that she meant to remove the body elsewhere when an opportunity occurred:—Held, that she was properly convicted of endeavouring to conceal the birth of the child by secretly disposing of the dead body, as it was not necessary in order to constitute that offence, under 9 Geo. 4, c. 31, s. 14, that the body should be put in a place which was intended to be the place of its final deposit. *Reg. v. Perry*, Dears. C. C. 471; 6 Cox, C. C. 531; 3 C. L. R. 691; 24 L. J., M. C. 137; 1 Jur., N. S. 408; *S. P.*, *Reg. v. Goldthorp*, Car. & M. 335; 2 M. C. C. 244; *Reg. v. Farnham*, 1 Cox, C. C. 349.

A woman was delivered of a child, whose dead body was found at her father's house in a bed among the feathers. There was no evidence to shew who placed it there, but it being proved that the woman had sent for a surgeon at the time of her confinement, and had prepared child's clothes, the judge directed an acquittal on the charge of endeavouring to conceal the birth. *Reg. v. Higley*, 4 C. & P. 366.

A prisoner found with the body still in her possession, though about to dispose of it, could not be convicted. *Reg. v. Snell*, 2 M. & Rob. 44.

In a case of concealment of birth under 9 Geo. 4, c. 31, s. 14, it was essential to the commission

of the offence that the prisoner should have done some act of disposal of the body after the child was dead; therefore, if the prisoner had gone to a privy for another purpose, and the child came from her unawares, and fell into the soil and was suffocated, she must be acquitted of this charge, notwithstanding her denial of the birth of the child. *Reg. v. Turner*, 8 C. & P. 755. *S. P., Reg. v. Cowhead*, 1 C. & K. 623.

The act of throwing a bastard child down the privy, by its mother, was evidence of an endeavour to conceal the birth, within 43 Geo. 3, c. 58, s. 3. *Reg. v. Cornwall*, R. & R. C. C. 337.

Who may be Convicted of.]—On an indictment for child murder, no one but the mother can be convicted of a concealment of the birth of the child. *Reg. v. Wright*, 9 C. & P. 754.

— Aiding and Assisting.]—A woman was delivered of a child, which died soon after its birth; she concurred with her paramour in endeavouring to conceal the birth, and he, in consequence of her persuasion, she remaining in bed, took the body, and buried it in a field, intending thereby to conceal the birth:—Held, that she could be convicted of endeavouring to conceal the birth, under 9 Geo. 4, c. 31, s. 14, and he of counselling, aiding and abetting her in the offence. *Reg. v. Bird*, 2 C. & K. 817.

If a woman is delivered of a child which is dead, and a man takes the body and secretly buries it, she is indictable for the concealment by secret burying, under 9 Geo. 4, c. 31, s. 14, and he for aiding and abetting under s. 31, if there was a common purpose in both in thus endeavouring to conceal the birth of the child; but the jury must be satisfied not only that she wished to conceal the birth, but was a party to the carrying that wish into effect by the secret burial by the hand of the man, in pursuance of a common design between them. *Reg. v. Shelton*, 3 C. & K. 119.

If the body of a dead child was secretly buried, or otherwise disposed of, by an accomplice of its mother, the accomplice acting as her agent in the matter, the mother of the child was punishable under 9 Geo. 4, c. 31, s. 14. *Reg. v. Douglas*, 7 C. & P. 644.

4. INDICTMENT.

Ferm of—Death of Child.]—An indictment for concealing the birth of a child must expressly allege that the child is dead. *Reg. v. Davis*, 1 Russ. C. & M. 779.

An indictment on 9 Geo. 4, c. 31, s. 14, for endeavouring to conceal the birth of a dead child, need not have stated whether the child died before, at, or after its birth. *Reg. v. Cowhead*, 1 C. & K. 623.

— Mode of disposing of Body.]—An indictment for concealing the birth of a child “by secretly disposing of the dead body,” under 9 Geo. 4, c. 31, s. 14, without shewing the mode of disposing of the dead body, was bad. *Reg. v. Hounsell*, 2 M. & Rob. 292.

— Endeavour to Conceal.]—An indictment for that offence, which charged that the defendant did cast and throw the dead body of the

child into soil in a privy, “and did thereby then and there unlawfully dispose of the dead body of the child, and endeavour to conceal the birth thereof,” sufficiently charged the endeavour to conceal the birth, as the word “thereby” applied to the endeavour, as well as to the disposing of the dead body. *Reg. v. Cowhead*, 1 C. & K. 623.

Where an indictment for concealing the birth of a child alleged the concealment to have been in and among a certain heap of carrots, and the evidence was that the body was laid upon the heap, but behind, so that it was hidden from the passers by by the upper part of the heap. Semble, that the evidence did not support the indictment. *Reg. v. —*, 6 Cox, C. C. 391.

Amendment.]—Held, that the provisions of 14 & 15 Vict. c. 100, s. 1, empowering the judge to amend certain variances between the indictment and the evidence, did not extend to such an amendment as this. *Id.*

XII. CONSPIRACY.

1. *What is.*
2. *For what Indictment lies.*
 - a. Generally, 116.
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1. WHAT IS.

Definition—Injury to an Individual not amounting to a Crime.]—The term conspiracy is divisible into three heads:—1st, where the end to be attained is in itself a crime; 2nd, where the object is lawful, but the means to be resorted to are unlawful; 3rd, where the object is to do an injury to a third party or a class, though if the wrong were inflicted by a single individual, it would be a wrong and not a crime. *Reg. v. Parnell* (No. 3), 14 Cox, C. C. 508.

Consent—Intention prior to Agreement.]—A conspiracy cannot exist without the consent of two or more persons, and their agreement is an act in advancement of the intention which each of them has conceived in his mind. *Mulcahy v. Reg. (in error)*, 3 L. R., H. L. 306; *S. C.*, 1r. Q. B., 1 Ir. R., C. L. 13.

No Overt Act necessary.]—The offence of conspiracy is rendered complete by the bare engagement and association of two or more persons to break the law, without any act being done in pursuance thereof by the conspirators. *O’Connell v. Reg. (in error)*, 11 C. & F. 15; 9 Jur. 25.

2. FOR WHAT INDICTMENT LIES.

a. Generally.

To induce Person to become Prostitute.]—An indictment for conspiracy at common law will lie for enticing a young woman under age to leave her father’s house and live in fornication with one of the defendants; and concerting

measures, with her own approbation, to carry her off and conceal her for that purpose. *Rea v. Grey (Lord)*, 1 East, P. C. 460.

Prisoners were found guilty upon an indictment charging them with conspiring to solicit, persuade, and procure an unmarried girl, of the age of seventeen, to become a common prostitute, and with having in pursuance of that conspiracy, solicited, incited and endeavoured to procure her to become a common prostitute:—Held, that although common prostitution was not an indictable offence, it was unlawful, and the indictment therefore good, without averring that the prosecutrix was a chaste woman at the time of the conspiracy. *Reg. v. Howell*, 4 F. & F. 160.

Two women induced a girl of fifteen, who had left her place as a servant, to go to their house, one of them pretending that she had known her deceased parents, and saying that she would keep her until she got a place, and that they both would assist her in getting one. They were both women of bad character, and the place where they resided was a house of ill-fame. It was false that they or either of them had known the parents of the prosecutrix, and they took no step whatever to get her a place, but urged her to have recourse to prostitution. They introduced a man to her, and attempted, by persuasion, and holding out prospects of money, to induce her to consent to illicit connexion with him. She refused to consent, and declared her intention of quitting the house; the prisoners refused to give her up her clothes, and she left without them:—Held, that they were rightly convicted of conspiracy, and that they might have been indicted for the offence at common law. *Reg. v. Mears*, 2 Den. C. C. 79; T. & M. 414; 4 Cox, C. C. 423; 20 L. J., M. C. 59; 15 Jur. 66.

An information will be granted for a conspiracy by a master, an attorney, and a gentleman, to assign over a female apprentice, by her own consent, for the purpose of prostitution. *Rea v. Delaval*, 3 Burr. 1434; 1 W. Bl. 410, 439.

To Murder by different Means.]—A design by two persons, by different means, to murder a child of which a woman is pregnant, and expects soon to be delivered, is sufficiently proximate to be the subject of a conspiracy. *Reg. v. Banks*, 12 Cox, C. C. 393.

To violate Provisions of Statute.]—An indictment for conspiracy to violate the provisions of a statute will lie after the repeal of such statute, for an offence committed before the repeal. *Reg. v. Thompson*, 16 Q. B. 832; Dears. C. C. 3; 20 L. J., M. C. 183; 17 Jur. 453.

Where special Provision in Statute.]—An indictment for a conspiracy at common law will lie against two or more persons for conspiring to commit an offence for which special provision is made by statute. *Reg. v. Bunn*, 12 Cox, C. C. 316.

To enforce by Legal Process Payment of Pretended Debt.]—A money-lender having a claim for a small sum against a borrower for money lent and high interest, caused an attorney to enter process for a sum double the amount, making up the difference by items charged on

various pretences, and after receiving payment from a third party of the sum lent, so that only a sum of 5*l.* remained due for interest, still prosecuted the suit for the whole amount indorsed on the process, and then tried to get from the debtor a charge on property of far greater value, and represented to the third party that the whole sum claimed was really due. The money-lender and the attorney being indicted for conspiracy to defraud the borrower, it was held, that there was a case for the jury; and that if the jury believed the two combined together to enforce by legal process payment of sums they knew not to be due, and falsely represented them to be due, in order to obtain payment, they were liable to be convicted, as they accordingly were. *Reg. v. Taylor* (No. 1), 15 Cox, C. C. 265.

On a motion for a new trial on behalf of two defendants, an attorney and his client, indicted for conspiracy to defraud, there being evidence that they combined together to enforce, by means of the abuse of legal process, payment of sums they must have known not to be due, and also made false representations with that object:—Held, that there was evidence for the jury on the charge, that a direction to the jury that if they were satisfied of these facts they ought to convict was correct, and that the conviction, therefore, was right. *Reg. v. Taylor* (No. 2), 15 Cox, C. C. 268.

To induce a Person to forego Legal Claim.]—An indictment will lie for conspiring by false representations of fact to induce a person to forego a claim, although the result of such conspiracy is not to deprive him of his right to enforce payment thereof by action. *Reg. v. Carlisle*, Dears. C. C. 337; 6 Cox, C. C. 366; 2 C. L. R. 479; 23 L. J., M. C. 108; 18 Jur. 386.

To cause Horse to be Purchased—Contract.]—A. and B., in concert with each other, falsely pretended to C. that a horse which they had for sale had been the property of a lady deceased, and was then the property of her sister, and was not then the property of any horse-dealer, and that the horse was quiet to ride and drive, and by these misrepresentations induced C. to purchase the horse:—Held, that they were indictable for conspiracy, although the money was to be obtained through the medium of a contract. *Reg. v. Kendrick*, 5 Q. B. 49; D. & M. 208; 12 L. J., M. C. 135; 7 Jur. 848.

To obtain Reward for Appointment to Office.]—An indictment will lie for a conspiracy to obtain money as a reward for an appointment to an office under government. *Rea v. Pollman*, 2 Camp. 229.

For Sale and Transfer of Railway Ticket.]—On an indictment for conspiracy for the sale and transferring of a railway excursion ticket, not transferable:—Held, that the prisoners must be acquitted, unless there was a previous concert between them to obtain the ticket for the purpose of its being fraudulently used. *Reg. v. Absolon*, 1 F. & F. 498.

To Procure a Marriage.]—A conspiracy to procure a marriage between poor persons of different parishes, for the purpose of exonerating

the parish of the woman and charging the other parish, is not an indictable offence, unless the parties were unwilling to marry, or some forcible or fraudulent means of bringing about the marriage were resorted to. *Reg. v. Seward*, 3 N. & M. 557; 1 A. & E. 706.

To Exonerate from Maintaining Pauper.]—A conspiracy to exonerate from the prospective burthen of maintaining a pauper, not at the time actually chargeable, and to throw the burthen upon another parish, by means not in themselves unlawful, is not indictable. *Id.*

To obtain Title to Estate.]—If a man and woman marry in the name of another, for the purpose of raising a specious title to the estate of the person whose name is assumed, it is a conspiracy. *Reg. v. Robinson*, 1 Leach, C. C. 37; 2 East, P. C. 1010.

To charge False Fact.]—Getting money out of a man by conspiring to charge him with a false fact is indictable as a conspiracy, whether the fact charged is criminal or not in itself. *Reg. v. Ripsal*, 1 W. Bl. 368; 3 Burr. 1320.

Agreement between Brokers at Auction.]—If brokers agree together, before a sale by auction, that one only of them should bid for each article sold, and that all articles thus bought by any of them should be sold again among themselves at a fair price, and the difference between the auction price and the fair price divided among them: this is a conspiracy for which they are indictable. *Levi v. Levi*, 6 C. & P. 239.

Mock Auctions.]—A mock auction with sham bidders, who pretend to be real bidders, for the purpose of selling goods at prices grossly above their worth, is an offence at common law, and persons aiding and abetting such a proceeding may be indicted for a conspiracy with intent to defraud. *Reg. v. Lewis*, 11 Cox, C. C. 484.

To extort Money.]—A conspiracy to extort money is per se an offence at common law, and need not be charged to be attempted by unlawful means. *Reg. v. Hollingberry*, 6 D. & R. 345; 4 B. & C. 329.

To obtain Goods without intention of Paying for them.]—A. obtained goods on credit at B.'s suggestion, in order that A. might sell them to B. below their value, B. aiding A. as a referee, and giving him a character. The evidence was such that B. must have known that A. was getting the goods without any intention of paying for them:—Held, that B. was guilty of conspiring with A. to defraud. *Reg. v. Orman*, 14 Cox, C. C. 381.

To fix Price of Goods.]—An information will be granted for a combination to fix the price of salt. *Reg. v. Norris*, 2 Ld. Ken. 300.

Fraudulent Fabrication of Shares.]—If persons conspire to fabricate shares in addition to the limited number of which a company, according to its rules, consists, in order to sell them as good shares, they may be indicted for it, notwithstanding any imperfection in the original

formation of the company. *Reg. v. Mott*, 2 C. & P. 521.

To raise Price of Stocks.]—It is an indictable offence to conspire on a particular day by false rumours, to raise the price of the public government funds, with intent to injure the subjects who should purchase on that day. *Reg. v. De Berenger*, 3 M. & S. 68.

To cause Shares to be Quoted.]—Directors and promoters of a company called the Eupion Fuel and Gas Company, Limited, were indicted for conspiring to induce the committee of the Stock Exchange, contrary to the true intent of the rules of the Stock Exchange, to order a quotation of the shares of the company in their official list; "and thereby to induce and persuade divers liege subjects of our lady the Queen, who should thereafter buy and sell the shares of the company, to believe that the company was duly formed and constituted, and had, in all respects, complied with the rules and regulations" of the Stock Exchange "so as to entitle the company to have their shares quoted on the official list of the Stock Exchange:—Held, that the indictment was good after verdict; as the court would take judicial notice of the fact that the shares were intended to be bought and sold on the Stock Exchange, and it was a necessary inference from the indictment and verdict that the intention of the conspirators was to induce the public to act on the belief that the company had been duly constituted, and to deal in the shares of the company; and consequently that the intention of the conspirators was to defraud and cheat the buyers and sellers of shares. *Reg. v. Aspinall*, 2 Q. B. D. 48; 46 L. J., M. C. 145; 35 L. T. 297; 25 W. R. 283; 13 Cox, C. C. 563—C. A. Affirming 13 Cox, C. C. 230; 35 L. T. 738; 24 W. R. 921.

To issue False Balance-Sheet or Prospectus.]—The directors of a joint-stock bank, knowing it to be in a state of insolvency, issued a balance-sheet shewing a profit, and thereupon declared a dividend of six per cent. They also issued advertisements inviting the public to take shares upon the faith of their representations that the bank was in a flourishing condition. On an ex officio information filed by the attorney-general, they were found guilty of a conspiracy to defraud. *Reg. v. Brown*, 7 Cox, C. C. 442; *S. C.*, sub nom. *Reg. v. Esdaile*, 1 F. & F. 213; Cook Evans' Rep. (1858).

Though some of the directors were aware of the insolvent state of the bank, and concurred in the balance sheet and the dividend with a view to induce persons to retain or to purchase shares in the bank in the hope or even belief that they might thereby rescue the bank from its difficulties, they were in point of law guilty of the offence charged in the information. *Id.*

With regard to the manager, who was also included in the information, held, that it was no excuse that he was the mere servant of the directors, for though under certain circumstances the servant may not be criminally liable for what he does under his master's orders; in this case, he, from the beginning, exercised the chief control over all the affairs and transactions of the bank. *Id.*

Semble, that it would have been sufficient to sustain the charge against all the defendants to shew that the bank was insolvent to their know-

ledge, and that they knowing it to be so, concurred in putting forth a false balance-sheet, representing it to be in a prosperous condition in order to lead the public to continue to confide in it. *Ib.*

The declaration of a dividend and issue of new shares in an insolvent state was fraudulent, if they knew of the insolvency, but the purchase of shares in the bank with the money of the bank, in order to keep up its credit, was fraudulent, whether or not they knew of the insolvency. *Ib.*

If they knew that debts, hopelessly bad, were included in the balance-sheet as assets, and the reserve fund set apart for bad debts was insufficient to meet them, this was evidence that the balance-sheet was fraudulent, even although it was usual to enter bad debts as assets, it being also usual to write them off when found to be hopeless. *Ib.*

Evidence that the defendants knew the true state of affairs sufficed to shew that the books representing otherwise were false to their knowledge, and although the balance-sheet truly represented the books, it was fraudulent. *Ib.*

Any evidence tending to shew that they knew the true state of affairs, whether or not they were implicated in particular transactions, was admissible against them. *Ib.*

On an indictment against a manager and secretary of a bank, containing counts charging them with making and publishing false statements of the affairs of the bank, and conspiring together to do so, the prosecutors were put to elect on which counts they would rely, and having elected to rely on the counts for conspiracy:—Held, that it was not enough to prove that the defendants made and put forth false statements intended and calculated to deceive, unless they had entered into a precedent and fraudulent conspiracy to do so. *Reg. v. Burch*, 4 F. & F. 407.

The principal count relied upon not stating an intent to defraud any particular parties:—Held, that though there were auditors whose duty it would be to discover any frauds, that was no answer to the prosecution, if the defendants were parties to such a conspiracy to deceive them and the directors. But, on the other hand, the jury were told that evidence that the directors were privy to all that was done was very material, with a view to negative such conspiracy, on the part of the defendants, to deceive. *Ib.*

On an indictment for conspiracy to cheat and defraud the public by means of the circulation of a false prospectus, to induce them to take shares in a worthless company, the doctrine laid down by Lord Ellenborough as to conspiracy in *Row v. De Berenger* (3 M. & S. 67), upheld and applied. *Reg. v. Gurney*, 11 Cox, C. C. 414.

To defraud Partner.]—A fraudulent agreement by a member of a partnership with third persons, wrongfully to deprive his partner by false entries and by false documents of all interest in some of the partnership property on taking accounts for the division of the property on the dissolution of the partnership, is a conspiracy, although the offence was completed before the passing of 31 & 32 Vict. c. 116, by which a partner can be criminally convicted for feloniously stealing partnership property. *Reg. v. Warburton*, 1 L. R., C. C. 274; 40 L. J., M. C. 22; 23 L. T. 473; 19 W. R. 165; 11 Cox, C. C. 584.

Effect of Intention of Prosecutor to Defraud.]

—Three persons being in a public-house with the prosecutor, one of them, in concert with the other two, placed a pen case on the table and left the room. Whilst he was absent, one of the two remaining took the pen out of the case, and put a pin in its place, and the two induced the prosecutor to bet with the other, when he returned into the room, that there was no pen in the case, and the prosecutor staked 50s. On the pencil case being turned up, another pen fell into the prosecutor's hand, and the three took the money:—Held, that the evidence supported a conviction upon a count charging the three with conspiring by false pretences and fraudulent devices to cheat the prosecutor of his money, although it appeared that he had the intention of cheating one of the three if he could. *Reg. v. Hudson*, Bell, C. C. 263; 8 Cox, C. C. 305; 6 Jur., N. S. 566; 29 L. J., M. C. 145; 2 L. T. 263; 8 W. R. 421.

b. Trade Combinations.

Mere Persuasion not to Work insufficient.]

On an indictment under 6 Geo. 4, c. 129, s. 3, for conspiracy to force workmen to leave their employment, the evidence being that the defendants merely waited outside the place where the workmen were employed and tried to induce them not to work there, and that their conduct was civil and peaceable:—Held, that the question was, whether they had endeavoured to control the free action or overcome the free will of the workmen by force or intimidation. If there had been merely persuasion, no matter what the consequence of it was, peaceable and unaccompanied by menace or violence, this would not render the defendants amenable to criminal justice on such charge, they being then protected by 22 Vict. c. 34. *Reg. v. Shepherd*, 11 Cox, C. C. 325.

A conspiracy to obstruct a manufacturer in carrying on his business, by inducing and persuading workmen who had been hired by him to leave his service, in order to force him to raise his rate of wages, or to make an alteration in the mode of conducting and carrying on his trade, is an indictable offence; and an agreement to induce and persuade workmen, under contracts of servitude for a time certain, to absent themselves from such service, is an indictable offence, although no threats or intimidation are proved, or any ulterior object averred. *Reg. v. Duffield*, 5 Cox, C. C. 404.

Workmen who agree that none of those who make the agreement will go into employ unless for a certain rate of wages have no right to agree to molest, or intimidate, or annoy other workmen in the same line of business, who refuse to enter into the agreement, and who choose to work for employers at a lower rate of wages. *Ib.*

In these cases the essence of the offence is the combination to carry out an unlawful purpose, and the unlawful combination or conspiracy is to be inferred from the conduct of the parties. *Ib.*

If persons conspire together to take away the workmen of a manufacturer, that constitutes such an obstruction and molestation of him as to support that part of a count which alleges a conspiracy by molesting and obstructing him. *Ib.*

Picketing.]—Picketing is an offence within

the Employer and Workmen Act, 1875. *Reg. v. Bauld*, 13 Cox, C. C. 282.

To quit Service—Special Statutory Provision.]

—The servants of a gas company, under a contract of service, being offended at the dismissal of a fellow servant, agreed together to quit the service of their employers, without notice and in breach of their contracts of service, by reason of which the company was seriously impeded in the conduct of their business. Being indicted for a conspiracy, it was contended that 34 & 35 Vict. c. 31, having determined that no act shall be illegal merely by reason of its being in restraint of trade, and having also defined the offence of obstructing or molesting, and otherwise determined what shall be deemed to be offences as between masters and servants, had virtually declared all other acts not to be punishable:—Held, that the provisions of the statute had not affected the common law of conspiracy, for which an indictment would lie. *Reg. v. Bunn*, 12 Cox, C. C. 316.

Preventing Workman from obtaining Work.]

—The Philanthropic Society of Coopers was formed in order to relieve its members when sick, and to provide for their funerals. One of their members was fined by them for working in a yard where steam machinery was used, and upon non-payment of the fine they acted in such a way as to prevent him from obtaining work:—Held, an illegal combination and conspiracy. *Reg. v. Hewitt*, 5 Cox, C. C. 162.

Dictating whom Masters shall employ.]—A combination of workmen, for the purpose of dictating to masters whom they shall employ, is indictable. *Reg. v. Bykerdyke*, 1 M. & Rob. 179.

3. INDICTMENT.

a. Who Indictable.

Who should be included.]—On an indictment for conspiracy, it is not proper to include persons who have not been privy to the acts relied upon as proof of the conspiracy, and whose offences, whatever they may have been, are wholly separate and distinct. To include in the indictment persons whose offence, if any, came under the latter head, was unfair and unjust, as tending to involve them in the odium of acts to which they were not parties. *Reg. v. Boulton*, 12 Cox, C. C. 87.

Person joining after Conspiracy formed.]—If a conspiracy is formed, and a person joins it afterwards, he is equally guilty with the original conspirators. *Reg. v. Murphy*, 8 C. & P. 297.

One Conspirator dying.]—Where two conspire, and one dies, the other may still be indicted for the conspiracy. *Reg. v. Nicholls*, 13 East, 412, n.

b. Form of.

Specifying Goods to be taken away.]—A count stated that the defendants conspired to cause goods, wares and merchandise, which had been imported into the port of London, whereof duties of customs were then and there due and payable,

to be taken and carried away from the port, and to be delivered to the owners thereof, without payment of a great part of the duties of customs so then and there due and payable thereon:—Held, that the gist of the offence being the conspiracy, it was not necessary to specify the goods, wares and merchandises, or the duties payable thereon. *Reg. v. Blake*, 6 Q. B. 126; 13 L. J. M. C. 131; 8 Jur. 145.

To obtain Goods—Owner must be stated.]—An indictment for a conspiracy to obtain goods by false pretences was bad, before 14 & 15 Vict. c. 100, s. 8, if it did not state to whom the goods belonged. *Reg. v. Parker*, 2 G. & D. 709; 3 Q. B. 292; 6 Jur. 822.

Names of Parties Defrauded.]—It is no objection that the count does not name the parties who were to have been defrauded. *Reg. v. Peck*, 9 A. & E. 686; 1 P. & D. 508.

An indictment to conspire to raise the price of funds with intent to injure the persons who should purchase is well enough, without specifying the particular persons who purchased as the persons intended to be injured. *Reg. v. De Berenger*, 3 M. & S. 68. See also *King v. Reg. (in error)*, *infra*, col. 126.

Specific Pretences.]—An indictment charged that the defendants conspired, by divers false pretences and subtle means and devices, to obtain from A. divers large sums of money, and to cheat and defraud him thereof:—Held, that the gist of the offence being the conspiracy, it was quite sufficient only to state that fact and its object, and not necessary to set out the specific pretences. *Reg. v. Gill*, 2 B. & A. 204.

Falsity of Document.]—In an indictment for a conspiracy, in producing a false certificate in evidence, it is not necessary to set forth that the defendants knew at the time of the conspiracy that the contents of the certificate were false; it is sufficient that for such purpose they agreed to certify the fact as true, without knowing that it was so. *Reg. v. Marbery*, 6 T. R. 619.

A count, charging that the defendants, being indebted to divers persons, conspired to defraud them of the payment of such debts, and in pursuance of such conspiracy executed a false and fraudulent deed of bargain and sale and assignment of certain goods from two of themselves to a third, with intent thereby to obtain emoluments to themselves, is bad, for omitting to show in what respect the deed was false and fraudulent. *Reg. v. Peck*, 9 A. & E. 686; 1 P. & D. 508.

Means by which Conspiracy to be Carried out.]—An indictment charged the defendants with conspiring to force workmen hired and employed by P. in his business of a japanner to depart from their employment, by unlawfully molesting them; by unlawfully using threats to them; by unlawfully intimidating them; by unlawfully molesting P., and by unlawfully obstructing P. so carrying on his business, and the workmen so hired:—Held, that these counts were sufficiently full and certain, and that the means by which the conspiracy was to be carried on were well stated in the words of the 6 Geo. 4, c. 129, s. 3. *Reg. v. Rowlands*, 2 Den. C. C. 364; 5 Cox, C. C. 486; 17 Q. B. 671; 21 L. J., M. C. 81; 16 Jur. 268. See

Hilton v. Eckersley, 6 El. & Bl. 47; 24 L. J., Q. B. 353; 1 Jur., N. S. 874.

To Cheat and Defraud—Sufficiency.—A first count of an indictment charged that the prisoners, intending to defraud one J. G., did conspire to cheat and defraud J. G. of a certain large sum of money, to wit, 20*l.* The second charged a conspiracy, by false pretences, to obtain from J. G. a large sum of money, to wit, 20*l.*, and to cheat and defraud him thereof. The third count charged a conspiracy by false pretences feloniously to steal from J. G. a large sum of money, to wit, 20*l.* The fourth count charged an attempt, by false pretences, to obtain from J. G. the sum of 20*l.*, with intent to defraud. The fifth and last count charged that the prisoners, by false pretences, did attempt to steal from J. G. a large sum of money, to wit, 20*l.*, of the moneys of the said J. G. The prisoners were found guilty, and judgment was passed on each count. They were convicted on all the counts, and were sentenced to a distinct punishment on each:—Held, that the fifth and last was a good count, and that the conviction was therefore be affirmed. *Reg. v. Bullock*, Dears. C. C. 653; 25 L. J., M. C. 92.

An indictment charging that the defendants unlawfully, fraudulently and deceitfully did conspire, combine, confederate and agree together, to cheat and defraud the prosecutor of his goods and chattels, is good. *Sydserv v. Reg. (in error)*, 11 Q. B. 245; 12 Jur. 418.

An indictment charged that the defendants conspired to cheat and defraud certain liege subjects of the Queen, being tradesmen, of quantities of their goods; that in pursuance of the conspiracy, the defendant B. fraudulently ordered and obtained upon credit from W. W. and C. W., upholsterers, divers goods of W. W. and C. W. (the count stated a like obtaining on credit from other tradesmen named, and from others whose names were unknown); and that, in further pursuance of their conspiracy, and in order that the goods might be taken in execution and sold, as after mentioned, the defendants ordered the same to be delivered by W. W. and C. W. at the house of B., and they were so delivered and never paid for; and in further pursuance, &c., and in order, &c., B. allowed them to continue in his house till they were taken in execution as after mentioned. That the defendants, in further pursuance, &c., did falsely and fraudulently pretend that certain debts were due from B. to K. and P., two others of the defendants, and K. and P. did, to obtain payment of such fictitious debts, by collusion with B., commence actions against B.; that K. and P. collusively signed judgment against B. in the actions, and issued execution thereon, by virtue of which the goods, before the expiration of the times of credit, were taken in execution, and sold to satisfy the fictitious debts; and so the jurors found the defendants in manner and means aforesaid did cheat and defraud W. W. and C. W. of the goods:—Held, that the indictment was good. *Reg. v. King*, D. & M. 741; 7 Q. B. 782; 13 L. J., M. C. 118; 8 Jur. 662.

Error being brought on the judgment:—Held, that the indictment was bad, for that the words alleging conspiracy shewed a design to injure, not tradesmen indefinitely, but individuals, and therefore either the persons should have been named, or an excuse stated for not naming them,

and that the allegation of conspiracy was not aided by the overt acts; and that the overt acts themselves did not, either in connexion with the allegation of conspiracy, or independently, amount to indictable misdemeanors. *King v. Reg. (in error)*, 7 Q. B. 795; 14 L. J., M. C. 172; 9 Jur. 883—Ex. Ch.

The defendants were tried at a quarter sessions upon an indictment, one of the counts of which charged a conspiracy, "by divers false pretences against the statute in that case made and provided, the said R. B. of his moneys to defraud, against the form of the statute:—Held, that the count sufficiently charged a conspiracy to obtain money by false pretences, and that it must be taken, after verdict, that the conspiracy was one of which a court of quarter sessions had cognizance, under 5 & 6 Vict. c. 38, s. 1. *Latham v. Reg. (in error)*, 9 Cox, C. C. 516; 5 B. & S. 635; 33 L. J., M. C. 197; 10 Jur., N. S. 1145; 10 L. T. 571; 12 W. R. 908.

A count is good which simply charges that the defendants, unlawfully, &c., did conspire, combine, confederate and agree together, by divers false pretences and indirect means, to cheat and defraud R. of his moneys. *Reg. v. Gompertz*, 9 Q. B. 824; 16 L. J., Q. B. 121; 11 Jur. 204.

An indictment to cheat and defraud a party of the fruits and advantages of a verdict obtained, is too general, and bad in point of law. *Re v. Richardson*, 1 M. & Rob. 402.

Where the overt acts were charged to have been done with intent to defraud L. G., who was entitled to receive the sum of money in question, and the jury found that L. G. was not so entitled:—Held, that a verdict of guilty could not be supported. *Reg. v. Dean*, 4 Jur. 364.

A count for conspiring to deceive and defraud divers of her Majesty's subjects who should bargain with the defendants for the sale of goods, of great quantities of such goods, without making payment, remuneration or satisfaction for the same, with intent to obtain profit and emolument to the defendants (not stating with particularity what the defendants conspired to do), is bad, as not shewing that the conspiracy was for a purpose necessarily criminal. *Reg. v. Peek*, 9 A. & E. 686; 1 P. & D. 508.

To do Illegal Act.—An indictment that certain persons "unlawfully, maliciously and seditiously did conspire and agree with each other, and with divers other persons unknown, to raise and create discontent and disaffection amongst the liege subjects of her Majesty, and to excite such subjects to hatred and contempt of the government and constitution of this realm as by law established, and to unlawful and seditious opposition to the government and constitution; and also to stir up jealousies, hatred and ill-will between different classes of her Majesty's subjects, and especially amongst her Majesty's subjects in Ireland, and feelings of ill-will and hostility towards and against her Majesty's subjects in other parts of the United Kingdom called England:—Held, that this statement, with or without the additional charge, "and to assume and usurp the prerogative of the crown in the establishment of courts for the administration of law," constituted a definite charge against the several defendants of an agreement between them to do an illegal act. *O'Connell v. Reg. (in error)*, 11 C. & F. 15; 9 Jur. 25.

A count, setting forth an agreement between

persons "to cause and procure, and aid and assist in causing and procuring, divers subjects of her Majesty, unlawfully, maliciously and seditiously, to meet and assemble together in large numbers, at various times and at different places within Ireland, for the unlawful and seditious purpose of obtaining, by means of the intimidations to be thereby caused, and by means of the exhibition and demonstration of great physical force at such assemblies and meetings, changes and alterations in the government, laws, and constitution of the realm by law established," whether or not comprehending the additional words, "and especially, by the means aforesaid, to bring about and accomplish a dissolution of the legislative union now subsisting between Great Britain and Ireland," and whether or not omitting the words "unlawfully, maliciously, and seditiously," does not sufficiently state the illegal purpose of such agreement, and is, therefore, bad for uncertainty. *Id.*

—**Intimidation.**—The word "intimidation," not being vocabulum artis, has not, necessarily, a meaning in a bad sense; and, in order to give it legal efficacy, it should at least appear, from the context of the indictment, what species of fear was intended, and upon whom such fear was meant to operate. *Id.*

Objects prohibited by Statute.—In an indictment for conspiracy at common law to effect objects prohibited by a statute, it is enough to follow the words of the act of parliament. *Reg. v. Rowlands*, 2 Den. C. C. 364; 17 Q. B. 671; 5 Cox, C. C. 436; 21 L. J., M. C. 81; 16 Jur. 268.

Overt Acts, whether Necessary to be Stated.]

—An indictment for a conspiracy to impoverish a man, by preventing him from working at his trade, need not state the overt acts used to effect the intended mischief. *Reg. v. Eccles*, 1 Leach, C. C. 274.

An indictment that C. died possessed of East India stock, leaving a widow; that the defendants conspired, by false pretences and false swearing, to obtain the means and power of obtaining such stock; that in pursuance of such conspiracy, they caused to be exhibited in the Prerogative Court of Canterbury a false affidavit made by one of them, in which the deponent stated that C.'s widow had died without taking out administration to C., and that deponent was one of her children; and that the defendants fraudulently obtained to deponent, as one of the children of C., a grant of administration to his estate. On motion to arrest the judgment, on the ground that a charge of conspiracy to obtain the means and power of obtaining the stock, did not describe any offence:—Semble, that the statement of the overt act done in furtherance of the objects of conspiracy was so interwoven with the charge of conspiracy itself, as to show an unlawful conspiracy. *Wright v. Reg. (in error)*, 14 Q. B. 148.

But held, that at all events the overt acts in themselves constituted a misdemeanor, on which the court could legally pronounce judgment. *Id.*

A count merely charging conspiracy in the same manner, without alleging the overt acts, is bad. *Id.* And compare *King v. Reg. (in error)*, *supra*.

Surplusage and Immateriality.]—A count charged the defendants with a conspiracy, by false pretences and subtle means and devices, to extort from T. E., one sovereign, his moneys, and to cheat and defraud him thereof; the evidence failed to prove that the defendants employed any false pretence in the attempt to obtain the money:—Held, that so much of the count might be rejected as surplusage, and the defendants convicted of the conspiracy to extort and defraud. *Reg. v. Yates*, 6 Cox, C. C. 441.

In an indictment for a conspiracy to extort money, one count averred that the defendants, in pursuance of a conspiracy to extort money from the prosecutor, falsely exhibited certain indictments against him; another count averred that the defendants, in pursuance of the like conspiracy, offered to suppress an indictment pending against the prosecutor, if he would give them money for so doing. The jury found the defendants guilty, but found specially that the indictments preferred by them against the prosecutor were not false:—Held, that the averment in the former count was immaterial, and that the latter count would support the conviction. *Reg. v. Hollingberry*, 6 D. & R. 345; 4 B. & C. 329.

4. PARTICULARS OF OVERT ACTS.

Effect of, and when Defendant is entitled to.]

—Particulars in an indictment for conspiracy having been ordered of overt acts, the counsel for the Crown were confined within them; but particulars pending the trial having been ordered, of bad debts incurred to the bank by one of the defendants, the Crown was not restrained, next day, the particulars not having been delivered, from giving evidence on that head. *Reg. v. Esdaile*, 1 F. & F. 213; *S. C.*, *Reg. v. Brown*, 8 Cox, C. C. 69.

If the counts for a conspiracy are framed in a general form, a judge will order that the prosecutor should furnish the defendants with a particular of the charges; and that particular should give the same information to the defendants that would be given by a special count. But the judge will not compel the prosecutor to state in his particular the specific acts with which the defendants are charged, and the times and places at which those acts are alleged to have occurred. *Reg. v. Hamilton*, 7 C. & P. 448.

Where an indictment for conspiracy charges the offence in general terms, the defendant is entitled to particulars of the charge, although there has been a previous committal by a magistrate. Therefore, where an indictment contained counts charging a conspiracy to cheat tradesmen of goods, without mentioning any specific case or name, time or place:—Held, that the defendant was entitled to such particulars. *Reg. v. Ryecraft*, 6 Cox, C. C. 76.

5. EVIDENCE.

Acts, &c., of Co-defendant when Evidence against others.]—On an indictment for conspiracy, where there is evidence of several persons having engaged therein, what is said by any of them at another time and place respecting the object of the conspiracy is evidence against the others. *Reg. v. Salter*, 5 Esp. 225. And see *Reg. v. Hammond*, 2 Esp. 719.

On an indictment against directors of a bank for conspiring to defraud, letters or statements by

individual defendants as directors to officers of the bank, were admitted as evidence against all of them. *Reg. v. Brown*, 7 Cox, C. C. 442; *S. C.*, sub nom. *Reg. v. Esdaile*, 1 F. & F. 213.

So, in an indictment for a conspiracy to cause themselves to be believed persons of large property, for the purpose of defrauding tradesmen, the prosecutor may give various instances of their giving a false representation of their circumstances, as overt acts of the conspiracy. *Reg. v. Roberts*, 1 Camp. 399; 2 Leach, C. C. 987, n.

On an indictment for a conspiracy, the letters of one of the defendants to the other are, under certain circumstances, admissible in evidence in his favour, to shew that he was the dupe of the other, and was not himself a participator in the fraud. *Reg. v. Whitehead*, 1 C. & P. 67.

Where an indictment charges an ordinary conspiracy, it is not necessary to prove a common design between the defendants before proving the acts of each defendant; for the acts of each defendant are only evidence against himself, and may be the only means of establishing the conspiracy. *Reg. v. Brittain*, 3 Cox, C. C. 77.

Information for a conspiracy to cause and procure goods to be imported without payment of part of the duties of customs, by entering the goods as less in quantity and quality than they really were. One of the defendants, B., was a landing-waiter; the other, T., who did not appear to take his trial, was a Custom-house agent. According to the course of business at the Custom-house, certain goods consigned to T. were placed in the custody of B., and, upon the examination of them, entries of the quantity and quality were made by B. and T. respectively in separate books, and the amount of duty was calculated thereupon:—Held, first, that evidence of an entry made by T. in his ledger, purporting to be an entry of the same goods, but varying from the preceding entries in respect to the quantity, was admissible for the purpose of proving the conspiracy, as an act tending towards the object of the conspiracy. *Reg. v. Blake*, 6 Q. B. 126; 13 L. J., M. C. 131; 8 Jur. 666.

Held, secondly, that evidence of a memorandum made by T. on the counterfoil of a cheque drawn by him, that part of the money arising from the fraud was received by B., was inadmissible, it being a declaration of T. after the principal transaction was complete. *Ib.*

A number of persons were charged with murder, committed by an act done in the course of a conspiracy for the purpose of liberating a prisoner, of which conspiracy he was cognizant:—Held, that acts of that prisoner, within the prison, and articles found upon him, were admissible against the persons so charged. *Reg. v. Desmond*, 11 Cox, C. C. 146.

If a handbill says that certain things will be done by certain persons, and that handbill is circulated where it is probable those persons would see it, and they do the very thing that the handbill indicates they would do, the contents of the handbill are admissible against them. *Reg. v. Duffield*, 5 Cox, C. C. 404.

In order to render the speech of a third person at a meeting admissible on an indictment for conspiring against third parties, not present at that meeting, it must be shewn either that such third person was co-operating at that time with the defendants as a conspirator, and engaged with them in one common purpose, or that he was acting as the agent of the defendant. *Ib.*

On an indictment in which four were charged with conspiracy to incite the public to crime, and also in separate counts, were charged each with conspiracy with some other to commit the substantive crime:—Held, that the evidence under the two heads of offence, was in its nature entirely distinct; that, under the former head, only such acts as were done in public were admissible, and under the latter head, only such acts as were inter se. And if the proof of the conspiracy consists of proof that the substantive crime has been committed, however legal such a course may be, it is not satisfactory. *Reg. v. Boulton*, 12 Cox, C. C. 87.

As to two, the only evidence was of letters to a third, not shewn to have been answered:—Held, to be no evidence of conspiracy. *Ib.*

Acts done without the Jurisdiction.—Acts done in Scotland were tendered in evidence:—Held, that not being within the jurisdiction of arrest, these were not admissible. *Ib.*

Who can give Evidence—Husband of one Prisoner.—A prisoner was indicted in one count for obtaining money from the trustees of a savings bank by pretending that a document produced by the wife of T. had been filled up by his authority, and in another count for a conspiracy with the wife of T. to cheat the bank. The wife was not indicted. The evidence of T. having been received in support of the indictment, the prisoner was acquitted on the count for conspiracy, and convicted on the other:—Held, that T.'s evidence was properly received, and that there was no inconsistency in the finding of the jury on the two counts. *Reg. v. Halliday*, 8 Cox, C. C. 298; Bell, C. C. 237; 29 L. J., M. C. 148; 6 Jur., N. S. 514; 2 L. T. 254; 8 W. R. 423.

Wife of one Prisoner.—But the wife of one defendant cannot be called on behalf of a co-defendant, though the parties appear and defend separately. *Reg. v. Locker*, 5 Esp. 107.

One Defendant.—Nor one defendant who suffers judgment by default. *Reg. v. Lafone*, 5 Esp. 155.

Two were jointly indicted for obtaining money by conspiracy and false pretences. On being arraigned, one pleaded guilty and the other not guilty. On the trial of the latter, the former was admitted as a witness although it was objected that the evidence of a co-conspirator could not be received under the count for conspiracy. The jury found him guilty on the false pretences counts, but not on the conspiracy counts:—Held, that the co-conspirator was admissible as a witness and that the conviction should stand. *Reg. v. Gallagher*, 32 L. T. 406.

Unstamped Document.—In the course of proving a conspiracy to defraud, carried into effect by prevailing upon the prosecutor to accept bills, a warrant of attorney, given to him for the purpose of inducing him to accept, reciting the acceptance, may be given in evidence, though unstamped. *Reg. v. Gompertz*, 9 Q. B. 824; 16 L. J., Q. B. 121; 11 Jur. 204. *Sec 33 & 34 Vict. c. 97, s. 17.*

Production of Original when Unnecessary.—On an indictment for conspiring and unlawfully meeting for the purpose of exciting discontent and disaffection, resolutions passed at a former

meeting are admissible. A copy of these resolutions delivered by such defendant to a witness at the time of the former meeting, as the resolutions then intended to be proposed, and which corresponded with those which the witness had heard read from a written paper, is admissible without producing the original. *Reg. v. Hunt*, 3 B. & A. 566.

Evidence of same Transaction.]—A. was charged with having conspired with J. and others unknown to raise insurrections and obstruct the laws. It was proved that A. and J. were members of a Chartist lodge, and that A. and J. were at the house of the latter on a certain day, on the evening of which A. directed the people assembled at the house of J. to go to the race-course at P. whither J. and other persons had gone:—Held, that, on the trial of A., evidence was receivable that J. had, at an earlier part of the day, directed other persons to go to the race-course; and it being proved that J. and an armed party of the persons assembled went from the New Inn:—Held, that, evidence might be given of what J. said at the New Inn, it being all one transaction. *Reg. v. Shellard*, 9 C. & P. 277.

S. and H. were jointly indicted for false pretences, and for a conspiracy. The evidence was, that they were ostensibly carrying on business as B. & Co., and that H. was the author of a book published by them. To force the sale of the book, S. got M. to write letters purporting to come from a lady of title ordering a copy of the book and to address them to country booksellers:—Held, that evidence of attempts to defraud other booksellers than those named in the indictment was admissible under the count for conspiracy. *Reg. v. Stenson*, 12 Cox, C. C. 111; 25 L. T. 666.

On an indictment for conspiring and unlawfully meeting for the purpose of exciting discontent and disaffection, resolutions passed at a former meeting, in another place, and at which one of the defendants presided, the professed object of which meeting was to fix the meeting mentioned in the indictment, are admissible to shew the intention of such defendant in assembling and attending the meeting in question, at which he also presided. *Reg. v. Hunt*, 3 B. & A. 566.

And large bodies of men having come to the latter meeting from a distance, marching in regular order, it was admissible to shew the character and intention of the meeting, that within two days of the same great numbers of men were seen training and drilling before day-break, at a place from which one of these bodies had come to the meeting, and on their discovering the persons who saw them, they ill-treated them, and forced one of them to take an oath never to be a king's man again; and it was admissible, for the same purpose, to shew that another body of men, in their progress to the meeting, on passing the house of one of the persons who had been so ill-treated, expressed their disapprobation at his conduct by hissing. *Ib.*

Object of Conspiracy—Itself Felonious.]—Where the evidence in support of a conspiracy shews the object of the conspiracy to be in itself felonious, and that a felony was committed in carrying it out, the defendants are not entitled to an acquittal on the ground that the misdemeanor is merged in the felony; nor is it any ground for arresting the judgment, that on the

face of the indictment itself the object of the conspiracy amounts to a felony, the gist of the offence charged being the conspiracy. *Reg. v. Button*, 11 Q. B. 929; 3 Cox, C. C. 229; 18 L. J., M. C. 19; 12 Jur. 1017.

Complaints to Police—Whether Complainants must be called.]—On the trial of an indictment for a conspiracy to procure large numbers of persons to assemble for the purpose of exciting terror in the minds of her Majesty's subjects, evidence was given of several meetings at which the defendants were present, and it was proposed to ask a witness, who was superintendent of police, whether persons complained to him of being alarmed by these meetings:—Held, that the evidence was receivable, and that it was not necessary to call the persons who made the complaints. *Reg. v. Vincent*, 9 C. & P. 275.

Representation as to Another's Solvency—Writing Unnecessary.]—A party may be convicted of a conspiracy to cheat and defraud, by means of a false and fraudulent representation as to the solvency or trade of another, although the representation was oral, and one for which, per se, he would not be civilly liable under 9 Geo. 4, c. 16, s. 14; but the question will be not merely whether the representation was false and fraudulent, but whether it was made in collusion with the co-defendant, for the purpose of cheating the prosecutor. *Reg. v. Timothy*, 1 F. & F. 39.

—No Benefit to Defendants accruing.]—On an indictment for a conspiracy to defraud by false representations of solvency, the defendants may be convicted who had no knowledge of the transactions which resulted in solvency, provided they were aware of the result, and concurred in the representations in furtherance of the common design, even although they did so with no motive of particular benefit to themselves. *Reg. v. Esdaile*, 1 F. & F. 213; *S. C. nom. Reg. v. Brown*, 7 Cox, C. C. 442.

General Evidence—Admissibility of.]—General evidence of the conspiracy charged may be received in the first instance, although it cannot affect the defendant unless afterwards brought home to him, or to an agent employed by him. And the same rule applies where a defendant seeks by such general evidence in the first instance to affect the prosecutor with a conspiracy to suborn witnesses for the destruction of the defence, provided the proposed evidence is previously opened to the court, as in the case of a prosecution to be proved by conspiracy. *The Queen's case*, 2 B. & B. 302.

An indictment alleging that I. W., C. W. and J. W., being persons in indigent circumstances, and intending to defraud tradesmen who should supply them with goods upon credit, conspired to cause J. W. to be reputed and believed to be a person of considerable property, and in opulent circumstances, for the purpose and with the intent of cheating and defrauding divers persons being tradesmen, who should bargain with them for the sale to the said I. W. of goods, the property of such last-mentioned persons, of great quantities of such goods, without paying for the same, with intent to obtain to themselves money and other profits, is not supported by proof that C. W. and J. W., being the wife

and daughter of I. W., represented that they were in independent circumstances, their income being interest of money received monthly; at another time, when engaging lodgings, that they were not in the habit of living in lodgings, and that they obtained various goods from tradesmen on credit, under circumstances that shewed an intent to defraud, but no proof being adduced that those goods were obtained by reason of any of those general statements. *Reg. v. Whitehouse*, 6 Cox, C. C. 38.

Overt Acts supporting Indictment.]—A count charging the defendants with conspiring, by divers subtle means and false pretences, to obtain goods and chattels from a tradesman, without paying for them, with intent to defraud him thereof, is supported by proof of overt acts, from which a conspiracy may be inferred, without proof of any such false pretence as is required in an indictment for obtaining goods by false pretences. *Ib.*

Overt acts in conspiracy, though not necessarily laid, and if laid not proved as against all the defendants, may be looked at as shewing the object of the conspiracy. *Reg. v. Esdaile*, 1 F. & F. 213; *S. C.* sub nom. *Reg. v. Brown*, 7 Cox, C. C. 442.

Indictment to Defraud—Proof of Obtaining Acceptances.]—An indictment for conspiring to defraud the prosecutor may be supported by proof of a conspiracy to obtain his acceptances, though the prosecutor parts with no money, and though he never has intended to take up the acceptances, and though the bills were never in his hands, except for the purpose of his accepting. *Reg. v. Gompertz*, 9 Q. B. 824; 16 L. J., Q. B. 121; 11 Jur. 204.

— Possession of Prosecutor—How Proved.]—In support of an indictment charging a conspiracy to defraud and deprive B. of certain leasehold messuages, whereof B. was lawfully possessed, and to cheat and defraud her of the rents and profits of the messuages; the evidence as to B.'s title was, that F., before her death, directed S., her next-of-kin, to convey the messuages to B. on account of a supposed equitable claim of B. to money received by F. S., after the death of F., and before administration, executed an agreement to assign to B., and went with her to the houses, and pointed out the property, and said B. was landlady, and he hoped the tenants would not shuffle with her as they had with F. B. afterwards received a small sum as rent. There was no proof that F. or S. was ever in possession, and no other evidence of B.'s title:—Held, that there was some evidence of a possession by B. to support the averment in the indictment. *Reg. v. Whitehouse*, 6 Cox, C. C. 129.

Preventing Persons carrying on Trade.]—An indictment for conspiring "to prevent the workmen of J. G. from continuing to work, &c." is supported by evidence of a conspiracy to prevent any from continuing, &c. *Reg. v. Bykerdyke*, 1 M. & Rob. 179.

An indictment against journeymen for a conspiracy against their employers, to prevent them from taking any apprentices, is proved by evidence of their having quitted their employment with an intention to compel such employers to

dismiss any person as an apprentice. *Reg. v. Ferguson*, 2 Stark, 489.

To Murder.]—An indictment alleging a conspiracy to murder a living infant will not be supported by evidence of a conspiracy existing previously to the birth of such infant, unless the agreement and intention continue subsequently to the birth. *Reg. v. Banks*, 12 Cox, C. C. 393.

To Defraud A. and others—What Admissible.]—In an indictment charging a conspiracy to cheat and defraud J. D. and others of goods, and laying as an overt act the obtaining goods of J. D. and others, the word "others" must mean "others his partners" throughout, and evidence of conspiring to defraud other persons than J. D. and his partners is not admissible. *Reg. v. Steel*, 2 M. C. C. 246; Car. & M. 337.

Dates in Indictment differing from Evidence.]—An indictment for a conspiracy contained several counts, alleging several misdemeanors on the same day:—Held, that the prosecutor might give evidence of several misdemeanors on different days. *Reg. v. Levy*, 2 Stark, 458.

What Evidence of Conspiracy Sufficient.]—If, on a charge of conspiracy, it appears that two persons, by their acts, are pursuing the same object often by the same means, one performing part of an act, and the other completing it, for the attainment of the object, the jury may draw the conclusion that there is a conspiracy. *Reg. v. Murphy*, 8 C. & P. 297.

On an indictment against A., B., C., D., E., F., G. and H., for conspiracy to cheat M. by selling a glandered horse as a sound horse, the evidence was, that A., having previously cheated M. by selling him a kicking horse, B., C., D. and E. obtained that horse from M. in exchange for a glandered horse, which he subsequently sold. A., accompanied by G., afterwards sold M. another horse, in which transaction the latter was again defrauded. Some evidence was given to shew that A. was frequently in company with some of the other defendants, and that he was aware of a previous sale of the glandered horse by them, but there was no other evidence to connect him with its sale to M.:—Held, that, in the absence of any evidence clearly leading to the conclusion that A. was a party to that sale, there was no evidence of a conspiracy to go to the jury against him. *Reg. v. Read*, 6 Cox, C. C. 134.

Certain wharfingers and their servants were indicted for a conspiracy to defraud by false statements as to goods deposited with them and insured by the owners against fire:—Held, that evidence that false statements were knowingly sent in by the servants, which would be for the benefit of the masters, and that afterwards the servants took fraudulent means to conceal the falsehood of the statements, with evidence that the employers had the means of knowing the falsehood, and knew of the devices used to conceal it, was no evidence to sustain the charge of a fraudulent conspiracy between the employers and servants. *Reg. v. Barry*, 4 F. & F. 389.

Prisoners were indicted for conspiring to commit larceny. A second count charged an attempt to commit a larceny. The evidence was that they, with another boy, were seen by a policeman to sit together on some doorsteps near a crowd, and

when a well-dressed person came up to see what was going on, one made a sign to the others, and two of them got up and followed the person into the crowd. One of them was seen to lift the tail of the coat of a man, as if to ascertain if there was anything in the pocket, but making no visible attempt to pick the pocket, and to place a hand against the dress of a woman, but no actual attempt to insert the hand into the pocket was observed. Then they returned to the doorstep, and resumed their seats. They repeated this two or three times. There was no proof of any preconcert, other than this proceeding:—Held, not to be sufficient evidence of a conspiracy. *Reg. v. Taylor*, 25 L. T. 75.

6. TRIAL AND VERDICT.

Venue.—An information at common law for a conspiracy between the captain and purser of a man of war, for planning and fabricating false vouchers to cheat the crown (which planning and fabrication were done upon the high seas), is well triable in Middlesex, upon proof there of the receipts by the commissioners of the navy of the false vouchers transmitted thither by one of the conspirators through the medium of the post, and the application there of a third person, a holder of one of such vouchers (a bill of exchange) for payment, which he there received. *Reg. v. Briscoe*, 4 East, 164.

Where Triable.—An indictment for a conspiracy to defraud is triable at quarter sessions. *Latham v. Reg. (in error)*, 5 B. & S. 635.

Verdict that Prisoner Guilty of Conspiracy with Y. or Z.—A. was indicted for conspiring with Y. and Z., and other persons to the jurors unknown. The evidence was confined to A., Y. and Z., and the jury was of opinion that A. conspired with either Y. or Z., but said that they did not know with which. Y. and Z. were thereupon both acquitted:—Held, that A. was entitled to be acquitted also. *Reg. v. Thompson*, 16 Q. B. 832; *Dears. C. C. 3*; 5 Cox, C. C. 166; 20 L. J., M. C. 183; 17 Jur. 453.

Several Objects—Several Defendants.—Upon a count charging one conspiracy, and one only, against all the defendants therein named, to effect several illegal objects, the jury may find all or some guilty of conspiring to effect one or more of the objects specified. *O'Connell v. Reg. (in error)*, 11 C. & F. 15; 9 Jur. 25.

On how many Counts—Single Conspiracy.—Where an indictment for conspiracy contains several counts, if only a single conspiracy is proved, the verdict may nevertheless be taken on so many of the counts as describe the conspiracy consistently with the proof. *Reg. v. Gompertz*, 9 Q. B. 824; 16 L. J., Q. B. 121; 11 Jur. 204.

Death of Co-defendant between Indictment and Trial.—Where one defendant in conspiracy dies between the indictment and trial, it is no ground of a venire de novo for a mis-trial, if the trial proceeds against both, no suggestion of the death being entered on the record. *Reg. v. Kendrick*, 5 Q. B. 49; D. & M. 208; 12 L. J., M. C. 135; 7 Jur. 848.

One may be Tried separately.—One of several prisoners indicted for conspiracy may be tried separately, and, upon conviction, judgment may be passed on him, although the others, who have appeared and pleaded, have not been tried. *Reg. v. Ahearn*, 6 Cox, C. C. 6.

Sentence.—Where three prisoners have been jointly indicted for a conspiracy to murder, and severally pleaded not guilty, but have severed in three challenges, and the crown has, consequently, proceeded to try one of such prisoners:—Held, that, upon conviction of such prisoner, judgment must follow, although the others have not been tried, and that the possibility of the other prisoners being found not guilty (although such a verdict would be a ground for reversing the judgment), is not a sufficient reason for holding such judgment, and all the legal consequences of such conviction of such prisoner, irregular. *Id.*

7. NEW TRIAL.

When Granted.—Where all of several defendants in an indictment for conspiracy are found guilty, if one of them shews himself entitled to a new trial on grounds not affecting the others, the new trial will nevertheless be granted. *Reg. v. Gompertz*, 9 Q. B. 824; 16 L. J., Q. B. 121; 11 Jur. 204.

XIII. DUELLING.

Inciting to Fight Duel.—An endeavour to provoke another to commit the misdemeanor of sending a challenge to fight, is itself an indictable misdemeanor, particularly where such provocation was given by a writing containing libellous matter, and alleged in the prefatory part of the indictment to have been done with intent to do the party bodily harm, and to break the king's peace; the sending such writing being an act done towards procuring the commission of the misdemeanor meant to be accomplished. *Reg. v. Phillips*, 6 East, 464; 2 Smith, 550.

If one kills another in a deliberate duel, under provocation of charges against his character and conduct, however grievous, it is murder in him, and his second, and therefore the bare incitement to fight, though under such provocation, is in itself a very high misdemeanor, though no consequence ensues thereon against the peace. *Reg. v. Rice*, 3 East, 581. See *Reg. v. Kirwan*, 2 B. & A. 462; *Reg. v. Young*, 8 C. & P. 644.

Venue.—If a man writes a letter with intent to provoke a challenge, seals it up and puts it into the post-office in Westminster, addressed to a person in the city of London, who receives it there, the writer may be indicted for this offence in the county of Middlesex. *Reg. v. Williams*, 2 Camp. 505.

XIV. EMBEZZLEMENT BY CLERKS AND SERVANTS.

1. *Statute*, 137.
2. *What may be Embezzled*, 137.
3. *What is Embezzlement*, 138.
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6. *Indictment.*

a. Averment as to whose Service, 155.

b. Averment as to whose Money or Goods, 159.

c. Other Points, 160.

7. *Trial and Evidence*, 161.

1. STATUTE.

By 24 & 25 Vict. c. 96, s. 68, *whosoever, being a clerk or servant, or being employed for the purpose or in the capacity of a clerk or servant, shall fraudulently embezzle any chattel, money or valuable security, which shall be delivered to or received, or taken into possession by him for or in the name or on the account of his master or employer, or any part thereof, shall be deemed to have feloniously stolen the same from his master or employer, although such chattel, money or security was not received into the possession of such master or employer otherwise than by the actual possession of his clerk, servant or other person so employed, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.* (Former provision, 7 & 8 Geo. 4, c. 29, s. 47, which repealed 39 Geo. 3, c. 85.)

2. WHAT MAY BE EMBEZZLED.

Debts Assigned to Trustees.—B. being in difficulties, assigned all his book debts, estate, and effects to trustees for the benefit of his creditors. He was employed by the trustees at a salary to manage the business and to collect the debts for them. He received the amount of two of the debts, but did not account for the sums received:—Held, that, inasmuch as the debts, being choses in action, could not be legally assigned, he had received only money which was in law, though not in equity, his own; and, therefore, that he could not be guilty of embezzling it. *Reg. v. Barnes*, 8 Cox, C. C. 129.

Halves of Bank-notes.—The halves of country bank-notes, sent in a letter, are goods and chattels; and a person who embezzles them is indictable for such embezzlement. *Reg. v. Mead*, 4 C. & P. 535.

Exchequer Bills.—If an indictment charges the prisoner with having embezzled "certain bills, commonly called Exchequer bills," and it appears that the person who signed them on the part of government was not legally authorized so to do, the indictment is bad; for they are not the things which they are averred to be. *Reg. v. Aslett*, 2 Leach, C. C. 954, 958; 1 N. R. 1; R. & R. C. C. 67.

Game.—The prisoner being employed as a gamekeeper, and having no authority to kill rabbits for his own use, killed and removed wild rabbits in and from a wood belonging to his master with the intention of selling them. The killing, removing, and selling were one continuous act:—Held, that he was not guilty of embezzlement. *Reg. v. Read*, 3 Q. B. D. 131; 14 Cox, C. C. 17; 47 L. J., M. C. 50; 37 L. T. 722; 26 W. R. 283.

3. WHAT IS EMBEZZLEMENT.

Goods Received from Master.—If a servant receives from his master goods, and sells and appropriates them to his own use, he is guilty of larceny and not embezzlement. *Reg. v. Hawkins*, 4 Cox, C. C. 224.

Goods in Possession of Master.—A. had agreed to buy straw from B. and had sent his servant C. to fetch it. C. did so, and put down the whole quantity at the door of A.'s stable which was in the court-yard of A. Part of the straw was put into the hay-loft, but part was taken away by C. and sold:—Held, that this was larceny and not embezzlement, as the delivery was complete when the straw was put down at the stable-door. *Reg. v. Hayward*, 1 C. & K. 518.

The prisoner was sent with his master's cart for some coals. The coals were delivered to the prisoner and deposited in the cart, on the road home the prisoner disposed of a portion of them:—Held, no embezzlement, as the prisoner having determined his exclusive possession of the coals when they were deposited in the cart, the possession from that time became the master's. *Reg. v. Reid*, Dears. C. C. 257; 2 C. L. R. 607; 23 L. J., M. C. 25; 18 Jur. 67.

Alleging Right to Keep Sums admittedly Received.—Embezzlement necessarily involves secrecy and concealment. If, therefore, instead of denying the appropriation of property, the prisoner, in rendering his account, admits the appropriation, alleging a right in himself, no matter how unfounded, or setting up an excuse, no matter how frivolous, his offence in taking and keeping is no embezzlement. *Reg. v. Norman*, Car. & M. 501.

Wilful Omission to Account.—It was the duty of a servant authorized to receive money for his employer to account to his employer on the evening of every day for the money received during the day by him for his employer, and to pay over the amount. He received three sums for his employer on three different days, and neither accounted for those sums nor paid them over. He never denied the receipt of them, or tendered any written account in which they were omitted:—Held, that if he wilfully omitted to account for these sums and pay them over on the respective days on which he received them, these were embezzlements, and that such wilful omissions to account and pay over were equivalent to a denial of the receipt of them. *Reg. v. Jackson*, 1 C. & K. 384.

Particular Sum or Part thereof must be Proved.—It was the duty of a clerk to receive money for his employer and pay wages out of it, and to make entries of all moneys received and paid in a book, and to enter the weekly totals of receipts and payments in another book, upon which last book he from time to time paid over his balances to his employer. The clerk having entries of weekly payments in his first book amounting to 25*l.*, he entered them in the second book as 35*l.*; and, two months after, in accounting with his employer, by these means made his balance 10*l.* too little, and paid it over accordingly:—Held, that he could not be convicted of embezzlement, without it being shewn that he

had received some particular sum on account of his employer, and had converted either the whole or part of that sum to his own use. *Reg. v. Chapman*, 1 C. & K. 119.

Abconding after Accounting for all Sums Received.]—If a person whose duty it is to receive money for his employer receives money and renders a true account of all the money he has received, he is not guilty of embezzlement if he absconds and does not pay over the money; but, if he had received the money, and had rendered an account in which it was omitted, this would be evidence to shew that he had embezzled the amount. *Reg. v. Creed*, 1 C. & K. 63.

Receiving Money from Master—Debiting Master with Amount Expended.]—The prisoner, who was clerk to the prosecutor, was indicted for embezzling certain moneys belonging to his master. The evidence shewed that the prisoner had received at different times several sums of money from the prosecutor, a dealer in skins, for the purpose of purchasing skins. The prisoner obtained the skins on credit, and applied the money to his own use, but debited prosecutor in his day-book with several sums of money as having been paid for the skins. The jury found the prisoner not guilty of embezzlement, but guilty of larceny.—Held, that the conviction was wrong. *Reg. v. Goodenough*, Dears. C. C. 210; 6 Cox, C. C. 206.

Money Received from Master—More stated to have been Paid Away than actually done.]—If a clerk receives money from his master to pay away on his master's account, and he states in his accounts that one of the payments was to a greater amount than it really was, this will be no embezzlement. *Reg. v. Murray*, 5 C. & P. 145; 1 M. C. C. 276.

Entry of Small Sum—Payment over of Money Received.]—If a servant, immediately on receiving a sum for his master, enters a smaller sum in his master's books, and ultimately accounts to his master for the smaller sum, he may be considered as embezzling the difference at the time he makes the entry; and it will make no difference though he received other sums for his master on the same day, and in paying those and the smaller sum to his master together he might give his master every piece of money or note he received at the time he made the false entry. *Reg. v. Hall*, R. & R. C. C. 463; 2 Stark. 67.

Entry in Ledger of Remittance—No Entry of Receipt.]—The prisoner was convicted of embezzlement. It was his duty to receive remittances from the customers of his masters, to enter them to the credit of such customers in a day or cash-book, and to enter the whole amount received by him on the credit side of a banker's deposit account, and to pay in the amount to the credit of the prosecutors with their bankers; and it was his duty afterwards to post the amounts in a ledger, which contained the accounts of the different customers. The prisoner received a remittance, which he appropriated to his own use; he made an entry of this amount in the ledger to the credit of the customer, but he made no entry of its receipt.—Held, that the conviction was right, as the entry made in the

ledger did not exempt the prisoner from the operation of the 47th section of the 7 & 8 Geo. 4, c. 29. *Reg. v. Lister*, Dears. & B. C. C. 118; 26 L. J., M. C. 26; 2 Jur., N. S. 1124.

Entries Correct, but no Remittance.]—It was the duty of a clerk to receive moneys daily at N., to enter all such moneys so received in a book, and to remit the amount weekly to L. His entries were all correct, and admitted the receipt of all the moneys; but he did not remit them to L., as was his duty.—Held, no embezzlement. *Reg. v. Hodgson*, 3 C. & P. 422.

Entries Correct, but Less Paid Over.]—B. was employed to drive a coach and it was his duty to inform a book-keeper how much he had received during the day; the book-keeper then entered the amount in a book and on the way bill. B.'s duty then was to pay over the money received to his employer. B. gave true accounts to the book-keeper who made these entries, but B. accounted to his employer for smaller sums and paid them over to him, saying that they were all he received.—Held, that this was embezzlement. *Reg. v. White*, 8 C. & P. 742.

Entry in Ledger by Banker's Clerk.]—A banker's clerk taking money from the till, intending to embezzle it, is guilty of felony, although the cheque of a customer is left in lien of it, if that customer has really no cash in the banker's hands, though both he and the banker may suppose he has, and if the cheque is drawn by the customer, not to pledge his own credit with the bank, or draw out money of his own, but to draw out money the prisoner falsely pretends to have in his name. *Reg. v. Hammon*, R. & R. C. C. 221; 2 Leach, C. C. 1083; 4 Taunt. 304.

Entries in Books—Fraudulently obtaining Receipts.]—G. was convicted upon an indictment for embezzlement. It was his duty, as the assistant overseer of a township, to collect the rates; and the course was, upon receipt, to pay them into a bank to the account of the overseers' receipts for the sums so paid. It was his duty also to enter the rates when received in a book, and at the audit he charged himself by the entries in his book and discharged himself by the receipts of the overseers. Having misappropriated certain moneys, which he duly entered in the book when received, he fraudulently obtained from the overseers receipts for the several sums stated in the indictment, by falsely telling them that he had paid the money into the bank. These receipts he produced to the auditor, and so deceived him as to his having handed over the moneys.—Held, that he was rightly convicted, and that the fact of his entering the sums, when received, in his book, did not alter the character of his offence. *Reg. v. Guelder*, Bell, C. C. 284; 8 Cox, C. C. 372; 30 L. J., M. C. 34; 6 Jur., N. S. 1214; 3 L. T. 337.

Goods given by Master to Servant to Sell—Servant deferring Payment.]—A person hired by a market gardener to do a day's work was requested by him to take some vegetables to market, sell them, and bring back the money; the prisoner thereupon sold four pots of potatoes, and received the money. He sold four other pots, but did not receive the money. On his

return to his master, he stated correctly the price he sold the potatoes for, but said that he would settle with him on a subsequent day, as he had not received the money, and did not offer the sum received, or say he had been paid for a part, and subsequently made the same excuse, and never paid any part of the money:—Held, that this was not embezzlement, unless he, when he said he had not received the money, meant that he had not received any part of it. *Reg. v. Winnall*, 5 Cox, C. C. 326.

A miller's foreman employed to sell goods for his master, sold some to a customer, received the money but did not account for the money in any way:—Held, that the prisoner was guilty of embezzlement. *Reg. v. Betts*, Bell, C. C. 90; 8 Cox, C. C. 140; 28 L. J., M. C. 69; 5 Jur., N. S. 274; 32 L. T., O. S. 339; 7 W. R. 239.

Goods or Notes given by Master to Servant.—Where the prosecutor gave his servant a five-pound note to get changed, which he did, and made off with the change:—Held, that it was an embezzlement and not a larceny. *Reg. v. Sulens*, Car. C. L. 319; 1 M. C. C. 129.

The prisoner, having been intrusted by his master with a number of articles of soldiers' clothing for the purpose of selling them, and ten pounds in silver, to enable him to give change, sailed in a ship for the coast of Africa, having, before his departure, written to his master to say that he would send the account, together with a remittance, from Madeira:—Held, that he could not be convicted of embezzlement, having received the goods from his master himself, and not from another for and on account of his master; but that he might have been convicted of larceny. *Reg. v. Hawkins*, 1 Den. C. C. 584; T. & M. 328; 14 Jur. 513.

Money received from Fellow Servant.—The prisoner had, as a servant, in the course of his duty, received from a fellow-servant money paid to that servant for his master by another servant, who had received it from the customers. It was the duty of the prisoner, after such receipt, to hand the money to another servant (the cashier) of his master, but instead of handing it over, he fraudulently retained it:—Held, that this was embezzlement. *Reg. v. Masters*, 1 Den. C. C. 332; T. & M. 1; 2 C. & K. 930; 3 New Sess. Cas. 326; 3 Cox, C. C. 178; 18 L. J., M. C. 2; 12 Jur. 942.

Marked Money given by Master to Third Person to pass at Shop.—The prosecutor gave some marked money to J. W. to expend at his (the prosecutor's) shop, for the purpose of detecting a servant, of whom the master had suspicions. The servant was convicted of embezzling a portion of the marked money:—Held, that the conviction was right. *Reg. v. Gill*, 6 Cox, C. C. 295; Dears. C. C. 289; 23 L. J., M. C. 50; 18 Jur. 70.

If a servant secretes moneys which his master has marked and sent by a friend to make a purchase at his shop, with a view to try the honesty of his servant, it is a felonious breach of trust, and an embezzling, and not a larceny at common law. *Reg. v. Hodge*, 2 Leach, C. C. 1033; R. & R. C. C. 160; S. P., *Reg. v. Whittingham*, 2 Leach, C. C. 912.

When Society or Partnership is illegally or

irregularly constituted.—Where a society, in consequence of administering to its members an unlawful oath, is an unlawful combination and confederacy under 37 Geo. 3, c. 123; 39 Geo. 3, c. 79; 52 Geo. 3, c. 104; and 57 Geo. 3, c. 19; a person charged with embezzlement, as clerk and servant to such society, cannot be convicted. *Reg. v. Hunt*, 8 C. & P. 642.

An officer of a friendly society, some of whose rules were in restraint of trade, embezzled its money:—Held, that rules in restraint of trade are not criminal, although they may be void as being against public policy, and that a society having such rules is entitled to the protection of the criminal law for its funds, and consequently, that the officer might legally be convicted of embezzlement. *Reg. v. Stainer*, 1 L. R., C. C. 230; 39 L. J., M. C. 54; 21 L. T. 758; 18 W. R. 439. See 32 & 33 Vict. c. 61.

A. was secretary and cashier to a company calling themselves "The R. M. & H. Coal Co. (Limited);" the number of members exceeded twenty, but no certificate of incorporation was put in evidence:—Held, that A. was rightly convicted of embezzlement as servant of B. and others, there being no evidence which ought to have been left to the jury that the company was incorporated. *Reg. v. Frankland*, L. & C. 276; 9 Cox, C. C. 273; 32 L. J., M. C. 69; 9 Jur., N. S. 388; 7 L. T. 799; 11 W. R. 346.

It is embezzlement in the clerk of a friendly society fraudulently to withhold the rents of a house collected in the course of his duty as clerk. It is no defence that the business of the society has not been conducted according to the statute. *Reg. v. Miller*, 2 M. C. C. 249.

Where Master has no Right to Money received.]

—If a servant receives money on his employers' account, and embezzles it, he is guilty of a felony, although they had no right to it, and were wrong-doers in receiving it. *Reg. v. Beacall*, 1 C. & P. 312, and *Reg. v. Wellings*, ib. 454, 457.

So, if the party embezzling is employed as the servant of a corporation, although not duly appointed their servant, even under their common seal. *Id.*

What Sum Embezzled—Weekly Aggregates.]

—The prisoner was a member of a co-partnership. It was his duty to receive money for the co-partnership, and once a week to render an account and pay over the gross amount received during the previous week. During each of three several weeks, within six months, the prisoner received various small sums, and failed to account for them at the end of the week, or to pay over the gross amount, but embezzled the money:—Held, that he might properly be charged with embezzling the weekly aggregates; that three acts of embezzlement of such weekly aggregates within six months might be charged and proved under one indictment; and that evidence of the small sums received during each week was admissible to shew how these aggregates were made up. *Reg. v. Balls*, 1 L. R., C. C. 328; 40 L. J., M. C. 148; 24 L. T. 760; 19 W. R. 876; 12 Cox, C. C. 96.

A person received 7l. 2s. 6d. in his capacity of clerk to overseers of a parish, and made an entry in a book of the receipt of that sum accordingly, and placed the money with other sums in his possession; the entry of 7l. 2s. 6d. was afterwards erased, and 5l. 6s. 10½d. substituted for it, and the

prisoner only accounted to the parish officers for 5*l.* 6*s.* 10½*d.* On an indictment for embezzling 1*l.* 15*s.* 7*d.*, and conviction thereon:—Held, that as the prisoner might have paid over the whole of what he received for the 7*l.* 2*s.* 6*d.*, and have taken the 1*l.* 15*s.* 7*d.* from other moneys he received, he was improperly convicted. *Reg. v. Tyers*, R. & R. C. C. 402.

Time of Embezzlement not Fixed.—A treasurer to guardians of the poor not accounting for a portion of money received for the guardians is an embezzlement, although no precise time could be fixed at which it was the prisoner's duty to pay over the money alleged to be embezzled. *Reg. v. Welch*, 2 C. & K. 296; 1 Den. C. C. 199; 2 Cox, C. C. 85.

Receipt by Servant for or in the Name of or on the Account of his Master.—Embezzlement of money by a servant under 24 & 25 Vict. c. 96, s. 68, must be in respect of money delivered to or received, or taken into possession by the servant for or in the name of or on the account of his master. *Reg. v. Cullum*, 2 L. R., C. C. 28; 42 L. J., M. C. 64; 28 L. T. 571; 21 W. R. 687.

When a servant, whose duty it was to take a barge belonging to his master with cargo from A. to B., and receive back such return cargo, and from such persons as his master should direct, and such only, contrary to the express orders of his master, which were to return empty from B. to C., part of the return voyage to A., took, nevertheless, a return cargo from B. to C., and received the freight from the owner of the cargo, who knew only the servant in the transaction, and did not account to his master for the freight, and denied having carried such return cargo:—Held, that the money was not received by him for or in the name of or on the account of his master, and that he was not guilty of embezzlement. *Ib.*

It was part of the duties of the prisoner as head manager of a fire insurance company at the head office to receive remittances and cheques sent to the head office from the managers of district branches. These cheques were usually drawn on the local bank and made payable to prisoner's order. On receipt it was also part of his duty to indorse them and hand them over to the cashier, who paid them into the company's bankers and accounted for them in his books. He received two cheques for the company from district managers of the amounts respectively of 400*l.* and 200*l.* Instead of handing them over to the cashier, he indorsed and cashed the cheques through private friends of his own, and later in the day paid the amount, viz. 600*l.*, to the cashier to be put against his salary account, which was overdrawn to that amount. The cashier did so, and returned him I O U's to that amount. After some interval of time the fraud was discovered. The prisoner was indicted for embezzling the two sums of 400*l.* and 200*l.*:—Held, that he had been guilty of embezzlement of the money notwithstanding that the cash was paid to him by his friends on his own account. *Reg. v. Gule*, 2 Q. B. D. 141; 46 L. J., M. C. 134; 35 L. T. 526; 13 Cox, C. C. 340.

The prosecutor had contracted with a railway company for finding and providing them with necessary horses and carmen for the purpose of conveying and delivering to the customers of the

company the coals of the company in their own waggons, and that he or his carmen should day by day duly account for and deliver to the company's coal manager all moneys received in payment for coals so delivered. The delivery notes, as well as receipted invoices of the coals, were handed to the carmen of the prosecutor, and the former were taken to his office, but the invoices receipted by the company were left with the customers on payment of the amount. The prisoner was the servant of the prosecutor, employed as his carman in the delivery of coals pursuant to the contract, and it was his duty to pay over direct to the clerks of the company such moneys as he might receive for coals. He delivered coals to one of the company's customers, and brought the delivery order to the office to be entered; he received for the coals 5*l.* 10*s.*, leaving the receipted invoice with the customer, which sum he converted to his own use. He was convicted of embezzling the moneys of the prosecutor, who had contracted with the company:—Held, that there was such privity between the prisoner and the company as to make the prisoner the agent of the company in receiving the money, and that such money was not received for or on account of the prosecutor, but for and on account of the company, and that he was wrongly convicted of embezzling the prosecutor's money. *Reg. v. Beaumont*, Dears. C. C. 270; 6 Cox, C. C. 269; 2 C. L. R. 614; 23 L. J., M. C. 54; 18 Jur. 159.

The prosecutor was agent to a railway company for delivering goods. He employed his own servants, of whom the prisoner was one, his own drays and horses, and was answerable to the company for the money received by his servants for the carriage of goods. It was the prisoner's duty to go out with the dray, to take with him goods, and a delivery-book handed to him by a clerk of the company, to deliver the goods and receive the amount of carriage, and to account for moneys received to the clerk of the company. The prisoner embezzled certain sums which he had received as due to the company, and for which he had given receipts in the company's name:—Held, that although the money was received in the name of the company, it was received on the account of the prosecutor, his master, and that a conviction for embezzlement was right. *Reg. v. Thorpe*, Dears. & B. C. C. 62; 8 Cox, C. C. 29; 27 L. J., M. C. 264; 4 Jur., N. S. 466.

The prisoner was employed to superintend the grinding of corn at the mill of a county gaol. It was his duty to direct any person bringing grain to be ground at the mill to obtain a ticket at the porter's lodge. This ticket was his order for grinding the grain so brought to him, and it would have been a breach of his duty to have ground any grain without a ticket. Having ground the corn, he was to receive the money, and hand it over to the governor of the gaol. The prisoner had received money from different persons, whose corn he had ground without the production of a ticket, and appropriated it to his own use:—Held, that he had not received the money on account of his master, and was not therefore guilty of embezzlement. *Reg. v. Harris*, Dears. C. C. 344; 6 Cox, C. C. 363; 2 C. L. R. 464; 23 L. J., M. C. 110; 18 Jur. 408.

Receipt by Servant by Virtue of Employment.—Embezzlement of money by a servant not

authorized to receive it, was not within 7 & 8 Geo. 4, c. 29, s. 47. *Rea v. Thorley*, 1 M. C. C. 343.

If a servant generally employed by his master to receive sums of one description, and at one place only, is employed by him in a particular instance to receive a sum of a different description and at a different place, this latter sum was to be considered as received by him by virtue of his employment, within 39 Geo. 3, c. 85. *Rea v. Smith*, R. & R. C. C. 516.

A clerk, intrusted to receive money at home from outdoor collectors, received it abroad from outdoor customers:—Held, that such a receipt of money might be considered by virtue of his employment, within 39 Geo. 3, c. 85, although it was beyond the limits to which he was authorized to receive money for his employers. *Rea v. Beechey*, R. & R. C. C. 319.

A. was convicted on an indictment charging him with embezzlement. He was storekeeper and clerk of a county gaol, and it was no part of his duty (which was defined by written instructions) to receive money, but he had from time to time received moneys in the absence of the governor of the gaol, and to the knowledge of some of the justices. It was submitted that he had not received the money by virtue of his employment, and that that question ought to be left to the jury; but the recorder directed the jury that if they believed that A. received the money, he did receive it by virtue of his employment:—Held, that the question whether he received the money by virtue of his employment ought to have been left to the jury, and that the conviction was wrong. *Reg. v. Arman*, Dears. C. C. 575; 7 Cox, C. C. 45; 1 Jur., N. S. 1115, 1177.

A. was employed to lead a stallion, and he was to charge 30s. a mare, and not take less than 20s. He received the sum of 6s. for the covering of a mare:—Held, no embezzlement, as the sum was not received by virtue of his employment. *Rea v. Snowley*, 4 C. & P. 390.

A collector of poor-rates, as a servant of the overseers, has authority to receive the rates from the landlord, if he will pay them to him; and therefore receives such sums by virtue of his employment. *Reg. v. Adey*, 4 New Sess. Cas. 360; 1 Den. C. C. 571; T. & M. 296; 3 C. & K. 339; 4 Cox, C. C. 208; 19 L. J., M. C. 149; 14 Jur. 556.

4. CLERK OR SERVANT, WHO IS.

Question for Jury.]—The prisoner was indicted for embezzling moneys received by him by virtue of his employment as clerk to North and others, his masters. It is for the jury to say if the relation of master and clerk existed between the prosecutor and prisoner. *Reg. v. Chatarr*, 9 Cox, C. C. 1.

Assignor for Benefit of Creditors—Employment by Trustee.]—B. being in difficulties, assigned all his book debts, estate and effects to trustees for the benefit of creditors. He was employed by the trustees at a salary to manage the business and to collect the debts for them. He received the amount of two of the debts and did not account for it:—Held, that he was not a clerk or servant within the meaning of the act. *Reg. v. Barnes*, 8 Cox, C. C. 129.

Occasional Employment.]—A man was sufficiently a servant within 39 Geo. 3, c. 85, although he was only occasionally employed when he had nothing else to do. *Rea v. Spencer*, R. & R. C. C. 299.

And it is sufficient, if he was employed to receive the money he embezzled, although receiving money may not be in his usual employment, and although it was the only instance in which he was so employed. *Id.*

A., who was convicted of embezzlement, was secretary of a money club. His duties were cognate to that of receiving money, although the receipt of money was not expressly named as one of them in the rules, which were in writing. He was directed by the club to sue upon a joint promissory note, their property, or get better security, and the note was handed to him by the treasurer, not a member of the club, who desired that his name should not be used in legal proceedings. The note was payable to the treasurer's order, and A. indorsed the treasurer's name on the note, and employed an attorney, who issued a writ at the suit of A. In consequence of the action money was paid to him by one of the makers of the note, the receipt of which he denied, and fraudulently withheld the money from the club, and appropriated it:—Held, that he was rightly convicted. *Reg. v. Tongue*, Bell, C. C. 289; 8 Cox, C. C. 386; 30 L. J., M. C. 49; 3 L. T. 415; 9 W. R. 59.

Embezzlement by one who is neither clerk nor servant, nor in any respect under the control of the person by whom he is in a single instance only requested to receive moneys, was not punishable under 7 & 8 Geo. 4, c. 29, s. 49, as he did not come within the description of clerk, or servant, or a person employed for the purpose of, or in the capacity of a clerk or servant. *Rea v. Nettleton*, 1 M. C. C. 259.

A person employed to collect the sacrament money from the communicants is not the servant of the minister, churchwardens or poor, so as to be within 7 & 8 Geo. 4, c. 29, s. 47, if he embezzles the money. *Rea v. Burton*, 1 M. C. C. 237.

The prisoner had worked for the prosecutor, sometimes as a regular labourer and sometimes as a roundsman; but at the time in question, he not being at all in the prosecutor's service, was sent by the prosecutor to get a cheque cashed at a banker's, for doing which he was to be paid sixpence. He got the cash, and made off:—Held, no embezzlement, as the prisoner was not a servant of the prosecutor within 7 & 8 Geo. 4, c. 29, s. 47. *Rea v. Freeman*, 5 C. & P. 534.

A person hired by a market gardener to do a day's work, and who is requested by his employer to take some vegetables to market and sell them, and bring back the produce, is a servant to his employer in respect of such employment, within 7 & 8 Geo. 4, c. 29, s. 47. *Reg. v. Winnall*, 5 Cox, C. C. 326.

A. was secretary to a benefit building society. It was no part of his duty, as prescribed by the rules, to receive money for the society; but, according to the course of business, the subscriptions were frequently received by him, and when mortgages were redeemed the money was paid to him as secretary, but for and upon receipts signed by the trustees. Having embezzled the redemption-money upon a mortgage so paid to him, he was indicted under 7 & 8 Geo. 4, c. 29

s. 47 :—Held, that there was evidence for the jury that he was employed by the trustees as their servant to receive money on their behalf. *Reg. v. Hastie*, 9 Cox, C. C. 264; L. & C. 269; 32 L. J., M. C. 63; 9 Jur., N. S. 235; 7 L. T. 695; 11 W. R. 293.

A servant may be found guilty of embezzlement, though he is not a general servant, and is employed to receive in a single instance only. *Ree v. Hughes*, 1 M. C. C. 370.

Accountant and Treasurer to Overseers.—[One who was employed at a yearly salary under the appellation of accountant and treasurer to the overseers of a township, whose duty it was to receive all moneys receivable or payable by them, was a clerk and servant within 39 Geo. 3, c. 85. *Ree v. Squire*, 2 Stark. 348; R. & R. 349.

Payment of Commission.—[B., in answer to an application, was informed by letter from the prosecutors, "We are not disposed to appoint any agent at N., but for all business you do for us we shall be happy to pay you a commission." He afterwards obtained some orders, and misappropriated some moneys received by him. The jury found that it was his duty to account to the prosecutors for any money he might receive for them immediately on receipt of it :—Held, that B. was not a clerk or a servant, and could not be convicted of embezzlement. *Reg. v. May*, L. & C. 13; 8 Cox, C. C. 421; 30 L. J., M. C. 81; 7 Jur., N. S. 147; 3 L. T. 680.

A. was indicted for embezzlement. He was engaged by the prosecutor as a commercial traveller, to be paid by commission, and he was at liberty to obtain orders for other persons :—Held, that there was evidence of his being a servant to the prosecutor. *Reg. v. Tit*, L. & C. 29; 8 Cox, C. C. 458; 30 L. J., M. C. 142; 7 Jur., N. S. 556; 4 L. T. 259; 9 W. R. 534.

Solicitor Employed to Collect Rents.—[An indictment charged a person, who was a solicitor, with embezzlement. It appeared from his appointment, as entered in the minute-book of the company, that he was a land agent to the company, and that in the course of his duties he collected the rents of houses, refreshment-stalls, book-stalls, &c., and should have paid the sums over to the company, and that he managed the parochial assessments, as to the justness of claim. His salary was 300*l.* a year, and an extra sum was allowed for travelling expenses :—Held, that he was a clerk or a servant. *Reg. v. Gibson*, 8 Cox, C. C. 436.

No Remuneration Agreed upon.—[A., who had been a farm servant of B., but who had ceased to be so, was employed by B. to collect his debts, it being B.'s intention to go to America, and to take A. with him and set him up there in business for himself. There was no agreement for any remuneration to be paid by B. to A. for collecting the debts :—Held, that A. could not be convicted of embezzling the sums received by him on behalf of B. *Reg. v. Hoare*, 1 F. & F. 647.

Drover of Cattle.—[A drover of cattle was employed by a grazier in the country to drive eight oxen to London; his instructions were that

if he could sell them on the road, he might do so; and that those he did not sell on the road he was to take to a particular salesman in Smithfield Market, who was to sell them for the grazier: the drover received the money for the beasts and applied it to his own use :—Held, that he could not be convicted of embezzlement. *Reg. v. Goodbody*, 8 C. & P. 665.

Treated as Debtor, not as Servant.—[The prisoner kept a refreshment-house at B., and whilst doing so was engaged by the prosecutors, manure manufacturers, to get orders, which they supplied from their stores. He was to collect the money and send it at once to them, and also to furnish weekly accounts. He was paid by commission, and it did not appear that he had undertaken to give any definite time or labour to the business, but he was to act in a particular district, and was called agent for the B. district. He was to go through the country, see the farmers and get orders, and during the season was to be continually among the farmers. Subsequently the prosecutors rented stores at B., which were placed under the prisoner's control, and from them he supplied orders he obtained. The first mode, however, or the mixed mode, might have been restored to, according to the convenience of the prosecutors. After some time a proposal was made to a guarantee society to insure the prosecutors in respect to their connexion with the prisoner. This proposal was signed by the prisoner. It was a printed form issued by the society, and contained a notice that some salary must be payable, or the society would not insure. It stated that the prisoner's salary was 1*l.* a year besides commission, estimated at 65*l.* a year. At this time the prosecutors had agreed to give the salary of 1*l.* a year. The prisoner was allowed to get in arrear, and was treated by the prosecutors as a debtor in respect of the arrears. Having, however, received money from certain customers, he fraudulently returned their names as not having paid, and for this he was tried and convicted of embezzlement :—Held, that the conviction could not be sustained, as it was not established by the evidence that the prisoner was the servant of the prosecutors. *Reg. v. Walker*, Dears. & B. C. C. 600; 8 Cox, C. C. 1; 27 L. J., M. C. 207.

Where Duty not Compulsory.—[A butty collier, who received a certain sum for every ton of coal he raised, was also allowed to sell coal for his employer, the owner of the colliery. It was his duty to pay over the gross money received on such sales, and he was subsequently allowed a poundage thereon. Having converted money received for coal to his own use, he neglected to account for it :—Held, that although the sale of the coal was not compulsory, he was servant to the owner of the colliery, so as to support an indictment for embezzlement. *Reg. v. Thomas*, 6 Cox, C. C. 403.

A person whose duty it is to obtain orders when and where he likes, and to forward them to his principal for execution, and then has three months within which to collect the money for the goods sent, is not a clerk or a servant. *Reg. v. Mayle*, 11 Cox, C. C. 150.

If such a person, at the request of his principal, collects a sum of money from a customer, with the obtaining of whose order he has nothing to do, he is a mere volunteer, and is not liable to

be prosecuted for embezzlement if he does not pay over or account for the money so received. *Id.*

A person who is employed to get orders for goods, and to receive payment for them, but who is at liberty to get the orders and receive the money where and when he thinks proper, being paid by a commission on the goods sold, is not a clerk or servant within 24 & 25 Vict. c. 96, s. 68. *Reg. v. Bowers or Bower*, 1 L. R., C. C. 41; 35 L. J., M. C. 206; 12 Jur., N. S. 550; 14 L. T. 671; 14 W. R. 803.

A person was employed as traveller to solicit orders, and collect the moneys due on the execution of the orders, and to pay over moneys on the evening of the day when collected, or the day following. He had no salary, but was paid by commission. He might get orders when and where he pleased within his district. He was to be exclusively in the employ of the prosecutors, and to give the whole of his time—the whole of every day, to their service.—Held, that he was a clerk and servant within 24 & 25 Vict. c. 96, s. 68. *Reg. v. Bailey*, 12 Cox, C. C. 56; 24 L. T. 477.

The prisoner was employed by a coal merchant under an agreement "that he was to receive 1s. per ton procuration fee, payable out of the first payment, 4 per cent. for collecting, and 3d. on the last payment. Collections to be paid on Friday evening before 5 P.M., or Saturday before 2 P.M." He received no salary, was not obliged to be at the office except on Friday or Saturday to account for what money he had received. He was at liberty to go where he pleased for orders.—Held, that he was not a clerk or servant within the 24 & 25 Vict. c. 96, s. 68, relating to embezzlement. *Reg. v. Marshall*, 21 L. T. 796.

A person engaged to solicit orders and paid by commission on the sums received, which sums he was forthwith to hand over to his employers, who was at liberty to apply for orders when he thought most convenient, and was not to employ himself for any other persons, is not a clerk or servant within 24 & 25 Vict. c. 96, s. 68. *Reg. v. Negus*, 2 L. R., C. C. 31; 42 L. J., M. C. 62; 28 L. T. 646; 21 W. R. 687.

An accountant and debt collector was employed by the prosecutors to collect certain debts specified in a list given to him. The time and mode of collecting the debts were in his discretion, and he was authorized to sue for them, if necessary, but at his own charge. In no case was he to receive from the prosecutors more than five per cent. on the amount collected by him and paid over to the prosecutors. The jury having found, on these facts, that he was employed in the capacity of clerk, and convicted him of embezzlement of certain sums received by him and not paid over to the prosecutors.—Held, that the finding was wrong, and that he was not employed as a clerk. *Reg. v. Hall*, 31 L. T. 883.

Captain of Barge Employed to Sell Coal.—Where the owner of a colliery employed the prisoner, as captain of one of his barges, to carry out and sell coal, and paid him for his labour by allowing him two-thirds of the price for which he sold the coals above the price charged at the colliery.—Held, that the prisoner was a servant within the meaning of 39 Geo. 3, c. 85; and having embezzled the price, he was guilty of larceny within the meaning of that act. *Reg. v. Hartley*, R. & R. C. C. 139.

Employment by other Masters.—A person employed by A. to sell goods for him at certain wages may be convicted of embezzlement as the servant of A., though at the same time employed by other persons and for other purposes. *Reg. v. Batty*, 2 M. C. C. 257.

The prisoner agreed with a manufacturer of earthenware to act as his traveller, and "diligently employ himself in going from town to town in England, Ireland, and Scotland, and soliciting orders for the printed and decorated earthenware manufactured by him, and that he would not, without his consent in writing, take or execute any order for vending or disposing of any goods of the nature or kind aforesaid, for or on account of himself or any other person." It was further agreed that the prisoner should be paid by commission, and should render weekly accounts. The manufacturer subsequently gave the prisoner written permission to take orders for two other manufacturers. The prisoner being indicted for embezzlement under 24 & 25 Vict. c. 96, s. 68.—Held, that he was a clerk or servant of the prosecutor within that statute. *Reg. v. Turner*, 11 Cox, C. C. 551; 22 L. T. 278.

A person employed upon commission to travel for orders and collect debts, was a clerk within 39 Geo. 3, c. 85, and might have been indicted for embezzlement, although he was employed by many different houses on each journey, and paid his own expenses out of his commission on each journey, and did not live with any of his employers, nor act in any of their counting-houses. *Reg. v. Carr*, R. & R. C. C. 198.

Employment by Father—Father Clerk to Local Board.—The prisoner's father was clerk to a local board, and held other appointments. The prisoner lived with his father, and assisted him in his office and in the business of the board. In his father's absence the prisoner acted for him at the meetings of the board, and when present he assisted him. The prisoner was not appointed or paid by the board; and there was no evidence that he received any salary from his father. The board having occasion to raise a loan on mortgage, the prisoner managed the business for his father; and at his father's office received the money from the mortgagees, and appropriated a part of it to his own use.—Held, that there was evidence that the prisoner was a clerk or servant, or employed as a clerk or servant, and was guilty of embezzlement. *Reg. v. Foulkes*, 2 L. R., C. C. 150; 44 L. J., M. C. 65; 32 L. T. 407; 23 W. R. 696.

Servant or Partner.—An instrument in the following form is a contract for service by a labourer, and not a contract of partnership:—"S. W. engages to take charge of the glebe land of the Rev. A. B., his wife undertaking the dairy and poultry, at 15s. a week, till Michaelmas, 1850, and afterwards at a salary of 25l. a year, and a third of the clear annual profits, after all the expenses of rent, rate, labour and interest on capital, &c., are paid, on a fair valuation made from Michaelmas to Michaelmas. Three months' notice on either side to be given, at the expiration of which the cottage to be vacated by S. W., who occupies it as bailiff, in addition to his salary.—March 12th, 1850.—(Signed) A. B., S. W."—The prisoner was directed to account, and was in the habit

of accounting, with the wife of the prosecutor. On the 4th October, the prisoner, in accounting with her, denied the receipt of two sums of money which he had received for and on account of his master, and appropriated them to his own use:—Held, that he was properly convicted of embezzlement, although Michaelmas was the time agreed upon when a valuation was to take place and the profits were to be ascertained. *Reg. v. Wortley*, T. & M. 636; 2 Den. C. C. 333; 5 Cox, C. C. 382; 21 L. J., M. C. 44; 13 Jur. 1137.

A. was a cashier and collector to commission agents. He was paid partly by salary and partly by percentage on the profits, but was not to contribute to the losses, and had no control over the management of the business:—Held, that he was a servant within the 7 & 8 Geo. 4, c. 29, s. 47, and not a partner. *Reg. v. McDonald*, L. & C. 85; 9 Cox, C. C. 10; 31 L. J., M. C. 67; 7 Jur., N. S. 1127; 5 L. T. 330; 10 W. R. 21.

By Members of Partnerships or by Joint Beneficial Owners.—By 31 & 32 Viet. c. 116, s. 1, *if any person, being a member of any co-partnership, or being one of two or more beneficial owners of any money, goods or effects, bills, notes, securities or other property, shall steal or embezzle any such money, goods or effects, bills, notes, securities or other property or of belonging to any such co-partnership or to such joint beneficial owners, every such person shall be liable to be dealt with, tried, convicted, and punished for the same as if such person had not been or was not a member of such co-partnership or one of such beneficial owners.*

A treasurer who was also a member of a friendly society (duly enrolled and the rules of which had been certified by the barrister appointed in that behalf), whose duty it was to receive the moneys paid into the society, and hold them to the order of the secretary, countersigned by the chairman or a trustee, and to account whenever called upon, to which office no salary was attached, is not a clerk or a servant liable to be indicted for embezzlement under 24 & 25 Viet. c. 96, s. 68. *Reg. v. Tyrie*, 1 L. R., C. C. 177; 38 L. J., M. C. 58; 19 L. T. 657; 17 W. R. 334; 11 Cox, C. C. 241.

A member of a friendly society was employed to receive the weekly payments made by the members. He gave correct receipts to the members, but omitted to enter in the contribution and cash books a large number of the sums so received. On being called upon for an explanation, he admitted that he had received the sums so omitted:—Held, that he was guilty of embezzlement. *Reg. v. Proud*, L. & C. 97; 9 Cox, C. C. 22; 31 L. J., M. C. 71; 8 Jur., N. S. 142; 5 L. T. 331; 10 W. R. 62.

A member of two unenrolled benefit clubs, paid as secretary and intrusted with the funds to deposit in the bank in the joint names of himself and the treasurer, dishonestly appropriated the sums so intrusted to him:—Held, that he could not be convicted of embezzlement as a servant. *Reg. v. Marsh*, 3 F. & F. 523.

Two friendly societies appointed a committee, of which the defendant was a member, to conduct an excursion; the committee employed him and several others to sell tickets. It was his duty to pay over the money so received,

which was to belong to the two societies, to a person appointed by the committee, but he received no remuneration for his services:—Held, that he was a joint owner of the money, and not a clerk or servant within 24 & 25 Viet. c. 96, s. 68, liable to be indicted for embezzlement. *Reg. v. Bren*, L. & C. 346; 9 Cox, C. C. 398; 33 L. J., M. C. 59; 9 L. T. 452; 12 W. R. 107.

A clerk of a banking company, established under 7 Geo. 4, c. 46, may be convicted of embezzling the money of the company, although he is a shareholder or partner in such company. *Reg. v. Atkinson*, Car. & M. 525; 2 M. C. C. 278.

Servant or Independent Officer.—Under an order of the Poor Law Commissioners, in pursuance of 4 & 5 Will. 4, c. 76, s. 46, the board of guardians of a union appointed A. to the office of collector of rates for the S. district, which district formed a part of the union. In the order of the Poor Law Commissioners, the duties of the collector, and the compensation he was to receive, were fully set forth, and upon the receipt of the order the guardians appointed him verbally, which appointment was afterwards submitted for approval to the Poor Law Commissioners, and ratified by them. The power of dismissal rested with the Poor Law Commissioners alone. The collector, on his appointment, gave a bond for the proper performance of his duties to the guardians, and to them he was bound to give in a statement of his accounts weekly. There were separate rates for each parish or district of the union, and the duty of the collector was to collect the rates of the S. district, and pay in the amount to a banker, to the credit of the overseers of that district, they alone having the right of disposing of it. Out of this sum the overseers paid the collector a percentage for his services:—Held, that an indictment for embezzlement was not sustainable, there being no such service to any one as the 7 & 8 Geo. 4, c. 29, s. 47, required, the collector being, under the circumstances, an independent officer. *Reg. v. Truman*, 2 Cox, C. C. 306.

Servant or Trustee.—A. was a carrier, residing at Somerton and going from that place to Stoke and back, employed, however, only between the glove sewers at Somerton and the manufacturers at Stoke, in carrying the gloves from and to the one and the other. The manufacturers knew nothing of the sewers, but A. gave the name of and took out a number for any woman desiring to be employed, received unsewn gloves from the manufacturers, and conveyed them to the women at Somerton, taking back the gloves when finished and receiving the amount due to the women for their work. The manufacturers looked to the women for the work; but if any were missing, and the women not found, they held the prisoner accountable for it. In accordance with this course of proceeding, A. received sewn gloves from two of the women, delivered them to the manufacturers, and received the amount due for the work, but fraudulently applied the money so received to his own use. He was tried for, and convicted of, embezzling the money of the two women:—Held, that the relation of master and servant did not subsist, but A. was a mere trustee, and was only guilty of a breach of trust, and not of embezzlement, and therefore the conviction was wrong. *Reg.*

v. *Gibbs*, Dears. C. C. 445 ; 6 Cox, C. C. 455 ; 24 L. J., M. C. 62 ; 1 Jur., N. S. 118.

By Officers of the Bank of England or Ireland.—By 24 & 25 Vict. c. 96, s. 73, *whosoever, being an officer or servant of the governor and company of the Bank of England or of the Bank of Ireland, and being intrusted with any bond, deed, note, bill, dividend warrant, or warrant for payment of any annuity or interest, or money, or with any security, money or other effects of or belonging to the said governor and company, or having any bond, deed, note, bill, dividend warrant, or warrant for payment of any annuity or interest, or money, or any security, money or other effects of any other person, body politic or corporate, lodged or deposited with the said governor and company, or with him as an officer or servant of the said governor and company, shall secrete, embezzle, or run away with any such bond, deed, note, bill, dividend or other warrant, security, money, or other effects as aforesaid, or any part thereof, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.*

By Persons in the Queen's Service or by the Police.—By 24 & 25 Vict. c. 96, s. 70, *whosoever, being employed in the public service of her Majesty, or being a constable or other person employed in the police of any county, city, borough, district or place whatsoever, and intrusted by virtue of such employment with the receipt, custody, management or control of any chattel, money or valuable security, shall embezzle any chattel, money, or valuable security which shall be intrusted to or received or taken into possession by him by virtue of his employment, or any part thereof, or in any manner fraudulently apply or dispose of the same or any part thereof to his own use or benefit, or for any purpose whatsoever except for the public service, shall be deemed to have feloniously stolen the same from her Majesty, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour ;*

And every offender against this section may be dealt with, indicted, tried and punished, either in the county or place in which he shall be apprehended or be in custody, or in which he shall have committed the offence ;

And in every case of larceny, embezzlement or fraudulent application or disposition of any chattel, money or valuable security in this and the last preceding section mentioned, it shall be lawful in the warrant of commitment by the justice of the peace before whom the offender shall be charged, and in the indictment to be preferred against such offender, to lay the property of any such chattel, money or valuable security in her Majesty. (Former provisions, 2 & 3 Will. 4, c. 4, ss. 1, 4, 5, and 22 & 23 Vict. c. 32, s. 25.)

By Virtue of Employment.—It was proved that a post-office letter-carrier was in the daily habit of calling at the lodge of an infirmity, and there receiving letters, with a penny on each, to prepay the postage of them ; and that he took them, with the penny, to the post-office ; and that, during his illness, a person who had performed his duties did the like. There was no evidence of any appointment :—Held, in an indictment under 2 & 3 Will. 4, c. 4, s. 1, for embezzling some of the pence thus received, that this was evidence to go to the jury, that the pence were received by the prisoner by virtue of his employment as a letter-carrier. *Reg. v. Thunsend*, Car. & M. 178.

Evidence of Service.—On an indictment for embezzlement against a letter-carrier, as a person employed in the public service of her Majesty, it is not necessary to prove his appointment as a letter-carrier, but evidence of his having acted as such is sufficient. *Rea v. Borrett*, 6 C. & P. 124.

If the wife of a party to whom a letter is directed pays the postage of the letter, she is entitled to demand an overcharge made for it ; and a refusal on the part of the letter-carrier to account for it to her is evidence of an embezzlement by him. *Id.*

Who Employed in Public Service.—An inspector of prisons duly authorized to receive the contributions of parents towards the maintenance of their children committed to reformatory and industrial schools under 29 & 30 Vict. cc. 117, 118, and instructed to pay the amount received into the Bank of England, to the credit of the paymaster-general, employed the prisoner, a member of the police force of a borough, as his agent in taking proceedings against the parents of such children for the recovery of such contributions on his behalf, and for generally carrying out the provisions of the Reformatory and Industrial Schools Act. Under this employment the prisoner received and misappropriated moneys, the contributions of parents, ordered by magistrates to be paid for the maintenance of their children in the schools :—Held, that he was, while so employed, in the public service of her Majesty, so as to render him amenable to an indictment for embezzlement under 24 & 25 Vict. c. 96, s. 70. *Reg. v. Graham*, 32 L. T. 38 ; 23 W. R. 326.

5. PRISONER NOT TO BE ACQUITTED IF LARCENY PROVED.

Statute.—By 24 & 25 Vict. c. 96, s. 72, *if upon the trial of any person indicted for embezzlement, or fraudulent application or disposition as aforesaid, it shall be proved that he took the property in question in any such manner as to amount in law to larceny, he shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that such person is not guilty of embezzlement, or fraudulent application or disposition, but is guilty of simple larceny, or of larceny as a clerk, servant, or person employed for the purpose or in the capacity of a clerk or servant, or as a person employed in the public service, or in the police, as the case may be ; and thereupon such person shall be liable to be punished in the*

same manner as if he had been convicted upon an indictment for such larceny;

And if upon the trial of any person indicted for larceny it shall be proved that he took the property in question in any such manner as to amount in law to embezzlement, or fraudulent application or disposition as aforesaid, he shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that such person is not guilty of larceny, but is guilty of embezzlement, or fraudulent application or disposition, as the case may be, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such embezzlement, fraudulent application or disposition; and no person so tried for embezzlement, fraudulent application or disposition, or larceny as aforesaid, shall be liable to be afterwards prosecuted for larceny, fraudulent application or disposition, or embezzlement, upon the same facts. (Former provision, 14 & 15 Vict. c. 100, s. 13.)

Upon an indictment under 31 & 32 Vict. c. 116, against a partner or a joint beneficial owner for stealing, charging him with being a partner in one set of counts, and in another with being a beneficial owner of the property stolen:—Held, that if upon the evidence it turned out that he was guilty of embezzlement and not of larceny, he might, upon a proper direction to the jury, be found guilty of embezzlement upon the indictment, by virtue of 24 & 25 Vict. c. 96, s. 72. So also, if the charge in the indictment had been one of embezzlement, and not larceny, he could have been found guilty of larceny if the evidence warranted it. *Reg. v. Rudge*, 13 Cox, C. C. 17; 31 L. T. 590.

Cases before above Statute.—A. was indicted for larceny as a servant. At the trial there was evidence of embezzlement, but none of larceny:—Held, that although by 14 & 15 Vict. c. 100, s. 13, a person indicted for larceny might be convicted of embezzlement, yet he could not be convicted of larceny if there was only evidence of embezzlement. *Reg. v. Gorbutt*, Dears. & B. C. C. 166; 7 Cox, C. C. 221; 26 L. J., M. C. 47; 3 Jur., N. S. 371.

On a charge for receiving goods knowing them to have been feloniously stolen and carried away, the prisoner may be convicted if the goods have been embezzled, and he received them knowing them to have been embezzled, for by 7 & 8 Geo. 4, c. 29, s. 47, embezzlement is deemed stealing. *Reg. v. Frampton*, Dears. & B. C. C. 585; 27 L. J., M. C. 229; 4 Jur., N. S. 566.

6. INDICTMENT.

a. Averment as to whose Service.

Whilst Prisoner a Clerk.—An indictment for embezzlement of money received by a clerk, whilst such, was good under 2 & 3 Will. 4, c. 4, without alleging the embezzling to have taken place whilst he was clerk. *Reg. v. Lovell*, 2 M. & Rob. 236.

Against Clerks of Joint-Stock Companies.—A. was indicted for embezzlement whilst clerk to B. and others. A. was secretary and cashier to a company calling themselves "The R., M. and H.

Coal Company (Limited);" the number of members exceeded twenty; the name of the company was over the door; the shares were transferable without the consent of the other shareholders; and a minute-book, in which the resolutions were entered, was kept. No certificate of incorporation was put in evidence:—Held, that he was rightly convicted as the servant of B. and others, there being no evidence which ought to have been left to the jury that the company was incorporated. *Reg. v. Frankland*, L. & C. 276; 9 Cox, C. C. 273; 32 L. J., M. C. 69; 9 Jur., N. S. 388; 7 L. T. 799; 11 W. R. 346.

Against Persons Employed by Partners.—A servant in the employment of two persons, as partners, must be considered as the servant of each. *Reg. v. Leech*, 3 Stark. 70.

A., being one of several proprietors of a coach, employed B. to drive it when he did not himself drive it. It was B.'s duty, on each day he drove, to tell a book-keeper how much money he had taken; the book-keeper entering that sum in a book and also on the way-bill; B.'s duty then was to pay over the sums to A. B. gave true accounts to the book-keeper, who made true entries; but B. accounted for smaller sums to A., saying that those were all, and paid over to A. these smaller sums. All the proprietors were interested in the money, but A. was the person to receive it, and he was accountable to his co-proprietors:—Held, on an indictment for embezzlement, that B. was rightly described in the indictment as the servant of A. *Reg. v. White*, 8 C. & P. 742.

Collector of Poor-Rates.—A collector of poor-rates, employed by the overseers, is properly charged with embezzlement, as servant to the overseers, although there are churchwardens for the same parish, who took part in making the rate. *Reg. v. Adey*, 1 Den. C. C. 571; 4 New Sess. Cas. 360; T. & M. 296; 3 C. & K. 339; 4 Cox, C. C. 208; 19 L. J., M. C. 149; 14 Jur. 556.

Assistant Overseer.—An assistant overseer of a parish, elected by the parishioners in vestry, under 59 Geo. 3, c. 12, s. 7, who fix his duties and salary, is to be deemed the servant of the inhabitants of the parish, and to receive money collected by him for the poor-rate levied upon the parish as such servant, and may be so described in an indictment for embezzling such moneys so received. *Reg. v. Carpenter*, 1 L. R., C. C. 29; 35 L. J., M. C. 169; 12 Jur., N. S. 380; 14 L. T. 572; 14 W. R. 773.

Under an order of the Poor Law Commissioners, founded on 4 & 5 Will. 4, c. 76, s. 46, the board of guardians of a union appointed A. an assistant overseer of a district in the union, of which the township of F. formed a part, and his duty was to assist the overseers of each of the townships of the district. A. was paid a salary by the guardians. A. received sums for poor-rate from ratepayers of the township of F., which he ought to have paid over to the bankers of the overseers of that township, instead of which he embezzled them:—Held, that A. was not indictable for embezzling this money as the money of the overseers, as he was not their servant; and that he was not indictable for this embezzlement as the

servant of the guardians, because, if he was their servant, it was not their money. *Reg. v. Townsend*, 2 C. & K. 168; 1 Den. C. C. 167; 2 Cox, C. C. 24.

Treasurer to Guardians.—The treasurer to the guardians of the poor of Birmingham, appointed under a local and personal act, is a servant of the guardians, and as such is indictable for embezzlement. *Reg. v. Welch*, 2 C. & K. 296; 1 Den. C. C. 199; 2 Cox, C. C. 85.

Bailiff of County Court.—A bailiff of a county court who has fraudulently appropriated the proceeds of levies made under the process of the county court, cannot for this misconduct be convicted as a servant of the high bailiff with having embezzled the moneys of the high bailiff his master. *Reg. v. Glover*, L. & C. 466; 9 Cox, C. C. 500; 33 L. J., M. C. 169; 10 Jur., N. S. 710; 10 L. T. 582; 12 W. R. 885.

Servant of Joint Committee.—A. was employed at a railway station belonging to four different companies, and which was maintained out of a joint fund. The servants at this station were appointed and paid, and might be dismissed, by a committee of directors of the several companies. A's duty was to deliver parcels which arrived at the station by the trains of the different companies, and to pay over the money received for them to the chief clerk of the parcels office. The chief clerk then paid over such money to the cashier of the committee, who kept a separate account for each company, and paid the money over directly to the company to which it belonged, or its bankers. A. having embezzled money received by him in the course of his duty, he was charged in different counts of an indictment as being the servant of the particular company whose money he had embezzled, of the four companies, of the committee, and of the station-master.—Held, that, at all events, he was properly charged as being the servant of the four companies. *Reg. v. Bayley*, Dears. & B. C. C. 121; 7 Cox, C. C. 179; 26 L. J., M. C. 4; 2 Jur., N. S. 1171.

Effect of Reassignment by Creditor's Trustee to Debtor.—The prisoner was engaged by U. at weekly wages to manage a shop. U. assigned all his estate and effects to R., and a notice was served on the prisoner to act as the agent of R. in the management of the shop. For fourteen days afterwards R. received from U. the shop moneys. Then the shop money was taken by U. as before. The prisoner received his weekly wages from U. during the whole time. Some time after a composition deed was executed by R. and U., and U.'s creditors, by which R. reconveyed the estate and effects to U.; but this deed was not registered until after the embezzlement charged against the prisoner.—Held, that he was the servant of U. at the time of the embezzlement. *Reg. v. Dixon*, 11 Cox, C. C. 178; 19 L. T. 384; 17 W. R. 189.

Officers of Friendly Societies, &c.—Trustees.—The trustees of a benefit building society borrowed money for the purposes of their society on their individual responsibility (there being no rule of the society authorizing them to borrow

money). The money on one occasion was received by the secretary, and embezzled by him.—Held, that he might be charged in an indictment for embezzlement as the servant of W. and others, W. being one of the trustees and a member of the society. *Reg. v. Redford*, 11 Cox, C. C. 367; 21 L. T. 508; 17 W. R. 262.

In an indictment against the clerk of a savings bank for embezzlement, he is properly described as clerk to the trustees, though elected by the managers. *Reg. v. Jenson*, 1 M. C. C. 434.

A member of and secretary to a society, fraudulently withholding money received from a member to be paid over to the trustees, may be indicted for embezzlement, and may be stated to be the clerk and servant of the trustees; and the money may be properly stated to be their property, though the society is not enrolled, and though the money ought in the ordinary course to have been received by a steward. *Reg. v. Hall*, 1 M. C. C. 474.

A. was indicted for embezzlement as being a clerk and a servant of B., C. & D. A. was a member of, and secretary to, a properly certified friendly society, of which B., C. & D. were the trustees, and had, from time to time, received (though not in his capacity of secretary) funds belonging to the society, some part of which he appropriated.—Held, that A. was properly convicted of embezzlement as the clerk and servant of B., C. & D. *Reg. v. Proud*, 9 Cox, C. C. 22; L. & C. 97; 31 L. J., M. C. 71; 8 Jur., N. S. 142; 5 L. T. 331; 10 W. R. 62.

It is embezzlement in the clerk of a friendly society fraudulently to withhold the rents of a house collected in the course of his duty as clerk; and he may be laid to be the clerk or servant of the trustees to whom the house was conveyed, if appointed either by them or the society. *Reg. v. Miller*, 2 M. C. C. 249.

The secretary of an unenrolled friendly society, whose duty it is to receive the weekly contributions of the members, to enter them in a book, and hand over the amount to the treasurer, who in his turn pays it into a bank in the names of the trustees of the society, may be properly described as the servant of the trustees in an indictment charging him with embezzling sums so received, and he cannot be described as the servant of the treasurer. *Reg. v. Woolley*, 4 Cox, C. C. 251.

A secretary of a friendly society under 18 & 19 Viet. c. 63, in which no trustee had ever been appointed, was convicted on an indictment for embezzlement, the indictment describing him as the servant of the treasurer, and also as the servant of C. (a member) and others.—Held, that the conviction was wrong. *Reg. v. Diprose*, 11 Cox, C. C. 185; 19 L. T. 292; 17 W. R. 180; S. P., *Reg. v. Blackburn*, 11 Cox, C. C. 157.

A member of and secretary to a benefit society, deriving a percentage from the funds of the society, received in the course of his duty certain money from the members of the society, which it was his duty to pay into an account in the savings bank kept in the names of certain other members of the society. Instead of paying the money into the bank he appropriated it.—Held, that he could not be convicted of embezzling the money upon an indictment charging him to be the servant of "A. B. and others," and laying the money to be that of "A. B. and others," A. B. being an ordinary member of the society. *Reg. v. Taffs*, 4 Cox, C. C. 169.

b. Averment as to whose Money or Goods.

That Money Embezzled is Property of Master.]—In an indictment under 39 Geo. 3, c. 85, against a servant for embezzling money received on his master's account, it is not sufficient to follow the words of the statute, but there must be a positive allegation that the money was the property of the master. *Reg. v. McGregor*, 3 Bos. & P. 106; R. & R. 23; N. P., *Reg. v. Beacall*, 1 M. C. C. 15.

Against Collectors of Rates.]—A. was employed by the overseers of a parish to collect poor-rates on their account. As their agent he demanded the amount of a rate from the landlord of a house who usually paid his tenants' poor-rates; he entered the amount in his book as uncollected and as legally excused, and embezzled the sum:—Held, that although the overseers might not have been able to enforce the payment of the sum so embezzled, he received it in virtue of his employment, and on account of his employers, and that it was not necessary to lay the money as the joint property of the churchwardens and overseers. *Reg. v. Adey*, 4 New Sess. Cas. 360; 1 Den. C. C. 571; T. & M. 296; 3 C. & K. 339; 4 Cox, C. C. 208; 19 L. J., M. C. 149; 14 Jur. 556.

In such case it is sufficient to describe the money received by the collector for the rate as the property of the overseers only, naming them. *Id.*

Against Servant Employed by Partners.]—A., being one of several proprietors of a Hereford and Birmingham coach, horsed it from Hereford to Worcester, and employed B. to drive it when he did not himself drive it; B. having all the gratuities as well when A. drove as when B. himself did so. It was the duty of B., on each day when he drove, to tell the book-keeper at Malvern how much money he had taken; the book-keeper entering that sum in a book and on the way-bill, together with what he had taken himself; and he then had to pay over the latter to B., who was to give the two sums to A. B. gave true accounts to the book-keeper, who made true entries; but B. accounted for smaller sums to A., saying that those were all, and paid over to A. these smaller sums. All the proprietors were interested in the money; but A. was the person to receive it, and he was accountable to his co-proprietors:—Held, that the money embezzled was properly laid as the money of A. *Reg. v. White*, 8 C. & P. 742.

Clerk of Joint-Stock Banking Company.]—It is sufficient in an indictment for embezzling the property of a joint-stock banking company to allege the stolen property to belong to one of the partners named and others, under 7 Geo. 4, c. 64, s. 14. *Reg. v. Pritchard*, 1 L. & C. 34; 8 Cox, C. C. 461; 30 L. J., M. C. 186; 4 Jur., N. S. 557.

Against Secretary of Friendly Society.]—Where, by the rules of certain unenrolled friendly societies, the members of one lodge were at liberty to pay their contributions to another lodge, if more convenient to them so to do:—Held, that in an indictment against the secretary of a lodge for embezzling moneys received from a member of another lodge, the moneys may be

laid as the property of the trustees of his lodge, to whose account all moneys received by him ought to be paid, although the trustees, in their turn, would, in this instance, have to account to the other lodge for the particular sum received on its behalf. *Reg. v. Woolley*, 4 Cox, C. C. 255.

A member of and secretary to a society fraudulently withholding money received from a member to be paid over to the trustees, may be indicted for embezzlement, the money being stated to be the trustees' property, though the society is not enrolled, and though the money ought in the ordinary course to have been received by a steward. *Reg. v. Hall*, 1 M. C. C. 474.

Amendment.]—The secretary of a friendly society, of which A. B. and others were trustees, was charged with embezzling money belonging to the society. In the indictment the property was laid as "of A. B., and others," without alleging that they were trustees of the society:—Held, that the indictment might be amended by adding the words "trustees of," &c. *Reg. v. Marks*, 10 Cox, C. C. 367.

c. Other Points.

Statute.]—By 24 & 25 Vict. c. 96, s. 71, for preventing difficulties in the prosecution of offenders in any case of embezzlement, fraudulent application or disposition, it shall be lawful to charge in the indictment and proceed against the offender for any number of distinct acts of embezzlement, or of fraudulent application or disposition, not exceeding three, which may have been committed by him against her Majesty or against the same master or employer, within the space of six months from the first to the last of such acts;

And in every such indictment where the offence shall relate to any money or any valuable security it shall be sufficient to allege the embezzlement, or fraudulent application or disposition, to be of money, without specifying any particular coin or valuable security;

And such allegation, so far as regards the description of the property, shall be sustained if the offender shall be proved to have embezzled or fraudulently applied or disposed of any amount, although the particular species of coin or valuable security of which such amount was composed shall not be proved;

Or if he shall be proved to have embezzled or fraudulently applied or disposed of any piece of coin or any valuable security, or any portion of the value thereof, although such piece of coin or valuable security may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, or to some other person, and such part shall have been returned accordingly. (Former provision, 7 & 8 Geo. 4, c. 29, s. 48.)

Within Six Calendar Months.]—An indictment, which charges in one count that within six calendar months the prisoner received three sums, laying a day to the receipt of each, and that, "on the several days aforesaid," he embezzled these sums, is bad, because it does not shew that the sums were embezzled within six months of each other; and this objection ought to be taken on demurrer. *Reg. v. Purchase*, Car. & M. 617.

An indictment which contains three charges of embezzlement should not only aver that the moneys which are the subject of the charges were received within six months, but should also aver that they were embezzled within six months. *Reg. v. Noake*, 2 C. & K. 620.

From whom Money Received.—In an indictment for embezzling money, it is not necessary to state from whom the money so embezzled was received. *Reg. v. Beucll*, 1 C. & P. 313, 454.

Exact Sum not Necessary.—An indictment for embezzling need not have specified the exact sum embezzled. *Reg. v. Carson*, R. & R. C. C. 303; *S. P.*, *Reg. v. Grove*, 1 M. C. C. 447.

"Clerk or Servant" or "In the Capacity of Clerk or Servant."—The secretary of an unenrolled friendly society, who is paid a yearly salary out of its funds, is properly described in the indictment as clerk and servant to the trustees, and it would be incorrect to designate him as employed in the capacity of clerk and servant. The latter description only applies where the prisoner is employed on temporary occasions, and does not usually fill the situation of clerk or servant. *Reg. v. Woolley*, 4 Cox, C. C. 255.

Joinder of Counts.—A count for embezzling bank-notes upon the statute may be joined with a count for larceny. *Reg. v. Johnson*, 3 M. & S. 539.

Where, in an indictment for embezzlement, there is a second count charging another act of embezzlement within six months from the first, under 7 & 8 Geo. 4, c. 29, s. 48, but alleging the money to be the property of a different person from that mentioned in the first count, the words connecting the second count with the first may be rejected as surplusage, and the second count dealt with as an independent count. *Reg. v. Woolley*, 4 Cox, C. C. 251.

A prisoner was indicted in the first count for embezzlement, and in the second for larceny, as a bailee. After plea pleaded and the jury was charged, and in the course of the trial, it was objected for the prisoner that the indictment was bad for misjoinder of counts. The court overruled the objection, and directed the prosecutor to elect upon which count he would proceed, and the prosecutor having elected to proceed upon the second count, the prisoner was found guilty thereon:—Held, that the conviction was right. *Reg. v. Holman*, 9 Cox, C. C. 201; L. & C. 451; 33 L. J., M. C. 153; 10 L. T. 464; 12 W. R. 764.

Where an indictment for embezzlement could not be supported because the offence was not an embezzlement but a larceny, and the larceny count stated the larceny to have been committed "in manner and form aforesaid":—Held, that the prisoner could not be convicted. *Itex v. Murray*, 5 C. & P. 145; 1 M. C. C. 276.

7. TRIAL AND EVIDENCE.

Venue.—A clerk, whose duty it was to remit at once to his employers in Middlesex all moneys collected by him as their clerk, collected at York, on the 18th of April, a sum of money as such clerk, but never remitted any portion of it. On the 19th and 20th of April he wrote and posted

from places in Yorkshire to his employers in Middlesex letters, making no mention of the money so collected, and on the 21st of April he wrote and posted at Doncaster in Yorkshire to his employers in Middlesex a letter which was intended to make them believe that he had not then in fact collected the money in question. These letters were duly received by the employers in Middlesex:—Held, that the receipt of the letter of the 21st of April in Middlesex was sufficient to give jurisdiction to try the prisoner in Middlesex. *Reg. v. Rogers*, 3 Q. B. D. 28; 47 L. J., M. C. 11; 37 L. T. 473; 26 W. R. 61; 14 Cox, C. C. 22.

It was the duty of a commercial traveller to remit daily to his employers, who resided in London, the moneys which he collected, without reduction. He, on the 1st and 2nd March, 1878, collected at Newark two sums of money which he did not remit or account for till the first week in April, when one of his employers went to Grantham, where the prisoner resided, saw him and taxed him with receiving moneys and not accounting to them for them. The prisoner then and there handed to his employer a list of moneys he had collected and not accounted for, including the above two sums. There was no evidence that the prisoner returned to Grantham on either of the days, or at what time of the respective days he received the two sums of money. He was indicted and convicted at the borough of Grantham Quarter Sessions for embezzling the above two sums of money:—Held, that the conviction was bad, as there was no evidence of any embezzlement within the borough of Grantham. *Reg. v. Treadgold*, 39 L. T. 291.

An indictment for embezzlement may be either laid in the county in which the money was received, or in the county where the prisoner disowned having received the money. *Reg. v. Hobson*, R. & R. C. C. 56; 1 East, P. C. Add xxiv.; 2 Leach, C. C. 975.

If a servant receives money for his master in the county of A., and being called upon to account for it in the county of B., there denies the receipt of it, he may be indicted for the embezzlement in the latter county. *Reg. v. Taylor*, 3 B. & P. 596.

A prisoner, who was employed as a travelling salesman by a tradesman living at Nottingham, received two sums of money for his master in the county of Derbyshire, and, having appropriated them to his own use, neglected to return and account to his master for the money, as it was his duty to do; and having been, about two months after the receipt of the money, met by his master in Nottingham, and on being asked by him respecting the two sums of money, said he was sorry for what he had done—that he had spent the money:—Held, that there was evidence to go to the jury of an embezzlement in Nottingham, and that the prisoner was rightly tried there. *Reg. v. Murdock*, 2 Den. C. C. 298; 5 Cox, C. C. 360; T. & M. 604; 21 L. J., M. C. 22; 16 Jur. 19.

Particulars of Charges—Contents.—If a prisoner does not know the specific acts of embezzlement intended to be charged against him, he should apply to the prosecutor for a particular of the charges; and if it is refused, the judge will, on motion supported by proper affidavits, grant an order for such particular to be given,

and postpone the trial, if necessary. Such particular ought at least to state the persons from whom money is alleged to have been received. *Rev v. Hodgson*, 3 C. & P. 422; *S. P., Rev v. Bootyman*, 5 C. & P. 300.

— **Jurisdiction to Order.**—The Court of Queen's Bench has no jurisdiction to make an order upon a prosecutor to deliver the particulars. The application should be made to the judge at the assizes. *Reg. v. Haslam*, 1 Jur., N. S. 1139.

Evidence that Prosecutor a Trustee of Bank.]

—A clerk to a savings bank was convicted on an indictment charging him with embezzlement, the property being laid in A. In order to prove that A. was a trustee of the bank, he was called, and stated that since the commission of the offence he had been acting as a trustee, but that before that date he had attended only one meeting, having on that occasion been requested to do so lest there should be a deficiency of trustees; but he was also a manager of the bank, and it did not appear that any act was done by him at that meeting which he might not have done as a manager:—Held, that this was insufficient evidence of acting to support the inference of the legal appointment of A. as a trustee, and that the conviction was wrong. *Reg. v. Esser, Dears. & B. C. C. 369*; 7 Cox, C. C. 384; 4 Jur., N. S. 15.

— **That Prisoner a Servant.**—If a person receives money as steward of another, proof of that circumstance is sufficient evidence of his being a steward, to support an indictment for embezzling such money. *Rev v. Beacall*, 1 C. & P. 312, and *Rev v. Wellings*, 1 C. & P. 454, 457.

A person indicted as servant to guardians of the poor of a parish:—Held, that the admission by him contained in the condition of his bond for the performance of his duties as treasurer, coupled with an act of parliament specifying those duties, was sufficient evidence of the nature of his appointment, viz., that he was to receive money for the guardians, and account to them for his receipts. *Reg. v. Welch*, 1 Den. C. C. 199; 2 C. & K. 296.

— **Admissibility to Shew Intent.**—An indictment charged the prisoner with having embezzled three sums of twenty-one pounds, the moneys of his employers, he being a clerk or servant. Evidence was given of the embezzlement of those sums, and it was then proposed to give evidence of other sums not charged in the indictment, but which had also been embezzled, to shew that if it should be contended the sums charged in the indictment were subjects of a mistake in keeping the accounts, there being many other sums unaccounted for, admitting evidence of such sums would assist the jury in determining what value was to be attached to the suggestion:—Held, that such evidence was admissible. *Reg. v. Richardson*, 8 Cox, C. C. 448; 2 F. & F. 343.

A member of a friendly society was employed to receive weekly payments made by other members, and appropriated certain sums thus paid. Upon the trial, the books of the society were tendered generally in evidence, and received, although it was objected that the evidence ought to be confined to the entries forming the subject

of the indictment:—Held, that they were rightly admitted. *Reg. v. Proud*, 9 Cox, C. C. 22; L. & C. 97; 31 L. J., M. C. 71; 8 Jur., N. S. 142; 5 L. T. 331; 10 W. R. 62.

— **Whether confined to Days Stated.**—A. was indicted for embezzlement as being a clerk and a servant of B., C. and D. A first count laid the offence, to wit, on the 18th of August, 1861. A second count laid a second act of embezzlement within six months, to wit, on the 1st of September. A third count laid a third act of embezzlement, also within six months, under the same videlicet. A. was a member of, and secretary to, a properly certified friendly society, of which B., C. and D. were the trustees, and had, from time to time, received, though not in his capacity of secretary, funds belonging to the society, some part of which he had appropriated:—Held, that the evidence of the acts of embezzlement need not be confined to the days stated under the videlicets. *Id.*

— **To Shew that Cheque Cashed.**—An indictment for embezzling money under 24 & 25 Vict. c. 96, s. 68, is not proved by shewing merely that the prisoner embezzled a cheque, without evidence that he has converted the cheque into money. *Reg. v. Keena*, 1 L. R., C. C. 113; 87 L. J., M. C. 43; 17 L. T. 515; 16 W. R. 375; 11 Cox, C. C. 123.

Sufficiency of Evidence.—A conductor of a tramway car was charged with embezzling 3s. It was proved that on a certain journey there were fifteen threepenny fares and twenty-five twopenny fares, and the conductor was seen to give tickets to each fare and to receive money from each, but what sum did not appear. He made out a way-bill for the journey debiting himself with only nine threepenny fares and sixteen twopenny fares. The mode of accounting was to deliver the way-bills for each journey to a clerk, and to hand him all the money received during each day on the following morning. The prisoner's money should have been 3*l.* 1*s.* 9*d.*, according to his way-bill for the day, but he paid in only 3*l.* 0*s.* 8*d.*:—Held, that there was sufficient evidence of the receipt of 7*s.* 11*d.*, the total amount of fares of the particular journey, and of the embezzlement of 3*s.* part thereof. *Reg. v. King*, 12 Cox, C. C. 73; 24 L. T. 670.

To support a charge of embezzlement against the secretary of a company, whose duty it was to receive moneys and pay wages, &c., out of the moneys, and to account for the balance, proof must be given of a specific appropriation of a particular sum of money. *Reg. v. Wolstenholme*, 11 Cox, C. C. 313.

Upon the trial of an indictment under 2 & 3 Will. 4, c. 4, s. 1, charging that A., being intrusted by virtue of his employment in the public service with the receipt and custody of certain money, the property of the crown, did fraudulently and feloniously apply the same to his own use, it was proved that A., being a receiver of taxes, had kept in his own hands a balance very much exceeding that which he was allowed to retain; and upon being asked whether he was prepared to pay over that balance or any part of it, he replied that he was not. He was then reminded that there was a balance of excise duties alone of about 300*l.* standing against him from the previous Monday

which was a receipt-day at a particular place in his district. He then produced 255*l.*, and said that was all he had in the world; and that the rest he had spent in an unfortunate speculation:—Held, that there was evidence of the receipt of a particular sum of 300*l.* by virtue of his employment, and of a misapplication by him of a part of it; and that, therefore, the conviction was right, even if evidence of a general deficiency on a balance of accounts would not alone have supported such an indictment. *Reg. v. Moak*, 7 Cox, C. C. 60; *Dears. C. C.* 626; 25 L. J., M. C. 66; 2 Jur., N. S. 213.

Upon an indictment for embezzling 6*s.* it was proved that the prisoner was a drayman in the employment of the prosecutors, who were brewers, and that his duty was to sell porter at a certain fixed price only, viz., 9*s.* 6*d.* per dozen. He sold some at 6*s.*, but did not receive the money for some time. In the interval the customer had informed the prosecutors of the transaction, and they told him to pay the money when the prisoner came for it. The prisoner accordingly received it, and did not account for it:—Held, that the evidence was sufficient to support the indictment. *Reg. v. Aston*, 2 Cox, C. C. 234; 2 C. & K. 413.

It was the duty of a banking clerk to receive money, and to pay it either into a box or a till, of each of which he kept the key, and to make entries of his receipts in a book; the balance of each evening being the first item with which he debited himself in the book the next morning. On the morning of the day in question, he had thus debited himself with 1,762*l.*; and on being called on in the evening by his employer to produce his money, he threw himself on his employer's mercy, and said he was about 900*l.* short. Upon an indictment for embezzling:—Held, that this was evidence upon which the jury might convict, although no evidence was given of the persons from whom the money was received, or of the coin of which it consisted. *Reg. v. Grove*, 7 C. & P. 635; 1 M. C. C. 447.

It is not enough to prove that a clerk has received a sum of money and not entered it in his book, unless there is also evidence that he has denied the receipt of it, or the like. *Reg. v. Jones*, 7 C. & P. 833.

A., a servant of B., was sent to receive rent due to B.; A. received it, and immediately went off with it to Ireland:—Held, that A.'s thus leaving her place and going off to Ireland, was evidence from which the jury might infer that A. intended to embezzle the money. *Reg. v. Williams*, 7 C. & P. 338.

—Written Agreement—Parol Evidence of.]

—Where there has been a written agreement between master and servant, in which the nature of the service is defined, on an indictment for embezzlement against the latter, parol evidence of the service is not admissible, unless notice has been given to produce the agreement. *Reg. v. Clapton*, 3 Cox, C. C. 126.

XV. EMBEZZLEMENT AND FRAUDS BY AGENTS, BANKERS, TRUSTEES, AND OTHERS.

1. *Agents and Bankers*, 166.
2. *Trustees*, 170.

3. *Directors, Members, and Officers of Companies*, 171.

4. *Disclosure of Circumstances*, 172.

1. AGENTS AND BANKERS.

By Conversion of Moneys or Securities.—[By 24 & 25 Vict. c. 96, s. 75, *whosoever, having been intrusted, either solely or jointly with any other person, as a banker, merchant, broker, attorney or other agent, with any money or security for the payment of money, with any direction in writing to apply, pay or deliver such money or security or any part thereof respectively, or the proceeds or any part of the proceeds of such security, for any purpose, or to any person specified in such direction, shall, in violation of good faith, and contrary to the terms of such direction, in anywise convert to his own use or benefit, or the use or benefit of any person other than the person by whom he shall have been so intrusted, such money, security or proceeds, or any part thereof respectively; (Former provision, 7 & 8 Geo. 4, c. 29, s. 49.)*

By Selling, Negotiating, or Pledging Securities.—[*And whosoever, having been intrusted, either solely or jointly with any other person, as a banker, merchant, broker, attorney or other agent, with any chattel or valuable security, or any power of attorney for the sale or transfer of any share or interest in any public stock or fund, whether of the United Kingdom, or any part thereof, or of any foreign state, or in any stock or fund of any body corporate, company or society, for safe custody or for any special purpose, without any authority to sell, negotiate, transfer or pledge, shall, in violation of good faith, and contrary to the object or purpose for which such chattel, security or power of attorney shall have been intrusted to him, sell, negotiate, transfer, pledge or in any manner convert to his own use or benefit, or the use or benefit of any person other than the person by whom he shall have been so intrusted, such chattel or security, or the proceeds of the same, or any part thereof, or the share or interest in the stock or fund to which such power of attorney shall relate, or any part thereof, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (Former provisions, 7 & 8 Geo. 4, c. 29, ss. 49, 50, and 7 & 8 Geo. 4, c. 27, repealing 52 Geo. 3, c. 63.)*

By Selling Property or Securities Intrusted to their Care.—[By s. 76, *whosoever, being a banker, merchant, broker, attorney or agent, and being intrusted, either solely or jointly with any other person, with the property of any other person for safe custody, shall, with intent to defraud, sell, negotiate, transfer, pledge, or in any manner convert or appropriate the same, or any part thereof, to or for his own use or benefit, or the use or benefit of any person other than the person by whom he was so intrusted, shall be guilty of a misdemeanor. (Former provision, 20 & 21 Vict. c. 54, s. 2.)*

Acting under Powers of Attorney.]—By s. 77, *whosoever, being intrusted, either solely or jointly with any other person, with any power of attorney for the sale or transfer of any property, shall fraudulently sell or transfer or otherwise convert the same, or any part thereof, to his own use or benefit, or the use or benefit of any person other than the person by whom he was so intrusted, shall be guilty of a misdemeanor.* (Former provision, 20 & 21 Vict. c. 54, s. 3.)

Factors fraudulently obtaining Advances on Property of Principals.]—By s. 78, *whosoever, being a factor or agent intrusted, either solely or jointly with any other person, for the purpose of sale or otherwise, with the possession of any goods or of any document of title to goods, shall, contrary to or without the authority of his principal in that behalf, for his own use or benefit, or the use or benefit of any person other than the person by whom he was so intrusted, and in violation of good faith, make any consignment, deposit, transfer, or delivery of any goods or document of title so intrusted to him as in this section before mentioned, as and by way of a pledge, lien or security for any money or valuable security borrowed or received by such factor or agent at or before the time of making such consignment, deposit, transfer or delivery, or intended to be thereafter borrowed or received, or shall, contrary to or without such authority, for his own use or benefit, or the use or benefit of any person other than the person by whom he was so intrusted, and in violation of good faith, accept any advance of any money or valuable security on the faith of any contract or agreement to consign, deposit, transfer or deliver any such goods or document of title, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to any of the punishments which the court may award as hereinbefore last mentioned;*

And every clerk or other person who shall knowingly and wilfully act and assist in making any such consignment, deposit, transfer or delivery, or in accepting or procuring such advance as aforesaid, shall be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the court, to any of the same punishments: provided, that no such factor or agent shall be liable to any prosecution for consigning, depositing, transferring or delivering any such goods or documents of title, in case the same shall not be made a security for or subject to the payment of any greater sum of money than the amount which at the time of such consignment, deposit, transfer or delivery was justly due and owing to such agent from his principal, together with the amount of any bill of exchange drawn by or on account of such principal, and accepted by such factor or agent. (Former provision, 5 & 6 Vict. c. 39, s. 6.)

Agents Intrusted in Course of Business.]—The 52 Geo. 3, c. 63, applied only to persons to whom securities were intrusted in the exercise of their function or business. *Reg. v. Prince*, 2 C. & P. 517.

Whilst in treaty with Messrs. G. & P. for the sale and transfer of a public-house licence, the prisoner was required by them to give security for the purchase-money before they would assist him in procuring a transfer. To enable him to give the required security, the prosecutor ac-

cepted three bills of exchange drawn upon him by the prisoner, which the latter was to deposit with G. & P. by way of security, and not negotiate or use for any other purpose, and if the transfer was not effected, was to return to the prosecutor. The prisoner, instead of depositing them with G. & P., converted two of them to his own use:—Held, that he was not an agent within s. 75 of 24 & 25 Vict. c. 96, and could not be convicted under that section. *Reg. v. Cosser*, 13 Cox, C. C. 187.

Where a party established a savings bank, consisting of 130 members, each of whom paid a weekly subscription of 2s. 1d., the odd penny being paid to him for the trouble of managing the affairs of the bank, the funds of which were to be disposed of once a week by a lottery, consisting of 129 blanks, and one prize amounting to 13l. which was to go to the holder of the fortunate ticket; and the defendant having absconded, after receiving from one of the subscribers deposits to the amount of 10l. 8s., without receiving any benefit therefrom:—Held, that he was not indictable under the 52 Geo. 3, c. 63, for embezzling the money as an agent, or as a person having the possession of money for safe custody. *Reg. v. Mason*, D. & R. N. P. C. 22.

A. placed valuable securities in the hands of B., with a written direction to invest the proceeds in the funds, "in case of any unexpected accident happening to A." No accident did happen to A. and the proceeds were by B. converted to his own use:—Held, that B. was not indictable under 52 Geo. 3, c. 63 (repealed); and it seemed that he would not be so under 7 & 8 Geo. 4, c. 29, s. 49. *Reg. v. White*, 4 C. & P. 46.

Misappropriation of Property Intrusted for Safe Custody to Agent.]—N., a solicitor, was intrusted by a client with money to invest on mortgage on the client's behalf; he, instead of so doing, fraudulently appropriated the money to his own use:—Held, that N. was not intrusted with such money for "safe custody" within s. 76 of 24 & 25 Vict. c. 96. *Reg. v. Newman*, 8 Q. B. D. 706; 51 L. J., M. C. 87; 46 L. T. 394; 30 W. R. 550; 46 J. P. 612.

An attorney was employed to raise a loan of money on mortgage, of which he was to employ a part in paying off an earlier mortgage, and to hand over the rest to the mortgagor. He prepared the mortgage deed, received the mortgage money, and handed over the deed to the mortgagee in exchange. He then misappropriated a part of the money to his own use:—Held, that no offence had been committed under 24 & 25 Vict. c. 96, s. 75 or 76. *Reg. v. Cooper*, 2 L. R., C. C. 123; 43 L. J., M. C. 89; 30 L. T. 306; 22 W. R. 555; 12 Cox, C. C. 600.

An insurance broker was employed to effect three policies upon a vessel, which he did, advancing the premiums. A total loss having occurred the broker received the necessary documents to collect the moneys insured, and thereupon collected the amounts due upon two of the policies, by cheques payable to his order, which he paid into his own bank to his own credit. The premiums advanced by the broker and his commission on effecting the policies and receiving the losses were unpaid to him. The broker on being asked for the moneys after they had been received, said they were not due until a future day, and subsequently made excuses, and did not pay over the sums received on account of the

losses to the prosecutor. The jury, in answer to a question left to them, found that the policies had been intrusted to the broker for a special purpose, viz., that he should receive the moneys due on them, and forthwith pay them over to the prosecutor. There was no evidence to support such a finding in the case:—Held, that there was a miscarriage, and as the court had no power to direct a new trial, the conviction should be quashed. *Reg. v. Tatlock*, 2 Q. B. D. 157; 46 L. J., M. C. 7; 35 L. T. 520; 13 Cox, C. C. 328.

Trust money having been invested on mortgage, the mortgage was paid off and the money left in the hands of the family solicitor, and was subsequently appropriated by him:—Held, that this was a fraudulent conversion to his own use of property intrusted to the solicitor for safe custody with s. 76 of 24 & 25 Vict. c. 96. *Reg. v. Fullagar*, 14 Cox, C. C. 370; 44 J. P. 57.

Sale by Agent after Authority Countermanded.]

—If any chattel or valuable security is intrusted to any broker or agent originally for the purpose of sale, but the authority to sell is afterwards countermanded, and the broker or agent, notwithstanding that countermand, sells the goods in violation of the orders of his principal, such broker or agent might be convicted of misdemeanor, under 7 & 8 Geo. 4, c. 29, s. 49. *Reg. v. Gomm*, 3 Cox, C. C. 64.

Written Direction.]—An indictment on 7 & 8 Geo. 4, c. 29, s. 49, against a broker for embezzlement of a security for money, must have alleged a written direction to him as to the application of the proceeds. *Reg. v. Golde*, 2 M. & Rob. 425.

"Direction" in Writing to apply Money.]

Trust money had been invested on mortgage. The mortgage was paid off, and the money left in the hands of the family solicitor, who wrote to the person beneficially interested, "R.'s money was paid on Saturday, the 6th day of April, 2,500*l.* and interest. . . . Let me know how you would like to have the 2,500*l.* invested, whether in the funds or on mortgage. I can get you 4 per cent. on a good security, but no more. More than 4 per cent. is not to be obtained upon such securities as trustees would be justified in investing." The answer was dated the 9th day of April: "Will consult C. at once about the money, and let you know. I do not wish it placed in the funds. I am very glad it is paid over, and hope it is well secured by this time." At or near the date of these letters it was clear that the money had been fraudulently appropriated to his own use by the solicitor:—Quære, whether the above letters amounted to a direction in writing to apply the money within s. 75 of 24 & 25 Vict. c. 96. *Reg. v. Fullagar*, 14 Cox, C. C. 370; 44 J. P. 57.

A stock and share dealer was employed by a lady to purchase securities for her. He bought in his own name, and received money from her from time to time to cover the amounts he had paid or had to pay for the securities. Such payments were not made against any particular item, but in cheques for round sums. On one occasion he wrote to her, "I inclose a contract note for 300*l.*, Japanese bonds, at 112, 336*l.*;" and the contract note ran, "Sold to Mrs. S. 300*l.* J. at 112, 336*l.*," and was signed by him. She wrote in reply, "I

have just received your note and contract note for the Japanese shares, and inclose a cheque for 336*l.* in payment." The dealer never paid for the bonds, but in violation of good faith appropriated to his own use the proceeds of the cheque:—Held, that the letter was a direction in writing to apply the proceeds of the cheque to pay for the bonds, if they had still to be paid for, within the meaning of 24 & 25 Vict. c. 96, s. 75; and that he was rightly convicted of a misdemeanor under that section. *Reg. v. Christian*, 2 L. R., C. C. 94; 43 L. J., M. C. 1; 29 L. T. 654; 22 W. R. 132; 12 Cox, C. C. 502.

An agent was employed to sell goods on commission, and as soon as he received moneys from customers he was to remit them to his employers. During the employment his employers wrote to him, "We will send H., B., and P. their bills at the end of the month, and the same day that you receive the money from the customers you must remit it to us. We will attend to your order, as our arrangements were to remit as soon as you received it, as you said they would not pay much before the 20th of each month":—Held, that this letter was not a direction in writing as to the application or disposition of moneys received by the agent within s. 75 of the 24 & 25 Vict. c. 96. *Reg. v. Brownlow*, 39 L. T. 479.

An indictment under 7 & 8 Geo. 4, c. 29, s. 49, against a banker for embezzling a security for money must allege a written direction to him as to the application of the proceeds. *Reg. v. Golde*, 2 M. & Rob. 425.

An allegation in an indictment that A. placed valuable securities in the hands of B. "with an order in writing to invest the proceeds in the government funds," is not supported by proof of an order in writing, directing B. to invest the proceeds in the government funds, in case of any unexpected accident happening to A. *Re v. White*, 4 C. & P. 46.

2. TRUSTEES.

Statute.]—By 24 & 25 Vict. c. 96, s. 80, *who-soever, being a trustee of any property for the use or benefit, either wholly or partially, of some other person, or for any public or charitable purpose, shall, with intent to defraud, convert or appropriate the same or any part thereof to or for his own use or benefit, or the use or benefit of any person other than such person as aforesaid, or for any purpose other than such public or charitable purpose as aforesaid, or otherwise dispose of or destroy such property or any part thereof, shall be guilty of a misdemeanor: provided, that no proceeding or prosecution for any offence included in this section shall be commenced without the sanction of the attorney-general, or, in case that office be vacant, of the solicitor-general: provided also, that where any civil proceeding shall have been taken against any person to whom the provisions of this section may apply, no person who shall have taken such civil proceeding shall commence any prosecution under this section without the sanction of the court or judge before whom such civil proceeding shall have been had or shall be pending. (Former provision, 20 & 21 Vict. c. 54, ss. 1 and 13.)*

By s. 1, the term "trustee" shall mean a trustee on some express trust created by some deed, will or instrument in writing, and shall include

the heir, or personal representative of any such trustee, and any other person upon or to whom the duty of such trust shall have devolved or come, and also an executor and administrator, and an official manager, assignee, liquidator, or other like officer acting under any present or future act relating to joint-stock companies, bankruptcy or insolvency. (Former provision, 20 & 21 Vict. c. 54, s. 17.)

Who is Trustee.—A person, who was trustee, treasurer and secretary of a savings bank, was indicted for misappropriation as a trustee. As secretary he received the money deposited, which, by the rules of the savings bank, it was his duty to hand over to the treasurer, who was required by the Savings Bank Acts to pay it over, when demanded, to the trustees, whose duty, as defined by the rules, was to vest it in the public funds in the names of the commissioners for the reduction of the national debt. He falsified his accounts, and appropriated to his own purposes part of the money so deposited with him as secretary, with intent to defraud:—Held, first, that he was a trustee for the benefit of other persons. *Reg. v. Fletcher, L. & C., C. C. 180; 9 Cox, C. C. 189; 32 L. J., M. C. 206; 8 Jur., N. S. 649; 6 L. T., N. S. 545; 10 W. R. 753.*

Held, secondly, that there was an express trust created by the rules, although they were made before the appointment of the trustee and the existence of the trust fund. *Id.*

Instrument in Writing.—Held, thirdly, that the rules of the savings bank were an instrument in writing. *Id.*

Indictment—Whose Property.—A trustee of a friendly society (a lodge of Odd Fellows) was appointed, by resolution of the society, to receive money from the treasurer and carry it to the bank. He received the money, but instead of taking it to the bank, he applied it to his own purposes. He was indicted as a bailee of the moneys of the treasurer R. C. feloniously converting the money to his own use; and also for a common-law larceny of the money of R. C. The 18 & 19 Vict. c. 63, s. 18, vests the property of such societies in the trustees, and directs the property to be laid in the names of the trustees in indictments:—Held, that the prisoner could not be convicted of feloniously converting or stealing the moneys of R. C. as charged in the indictment. *Reg. v. Loose, 8 Cox, C. C. 302; 1 Bell, C. C. 259; 29 L. J., M. C. 132; 6 Jur., N. S. 513; 2 L. T. 254; 8 W. R. 422.*

Sanction of Court of Chancery to Proceedings.—The Court of Chancery sanctioned criminal proceedings upon an affidavit, stating that a trustee had paid 1,409*l.* into his private bankers, had drawn out the whole, with the exception of 28*l.*, and had paid a private debt of 150*l.* out of the trust funds. *Wadham v. Rigg, 1 Drew. & Sm. 216.*

3. DIRECTORS, MEMBERS, AND OFFICERS OF COMPANIES.

Fraudulently Appropriating Property.—By 25 & 26 Vict. c. 96, s. 81, whosoever, being a director, member or public officer of any body

corporate or public company, shall fraudulently take or apply for his own use or benefit, or for any use or purposes other than the use or purposes of such body corporate or public company, any of the property of such body corporate or public company, shall be guilty of a misdemeanor.

Keeping Fraudulent Accounts.—By s. 82, whosoever, being a director, public officer or manager of any body corporate or public company, shall, as such, receive or possess himself of any of the property of such body corporate or public company otherwise than in payment of a just debt or demand, and shall, with intent to defraud, omit to make or to cause or direct to be made a full and true entry thereof in the books and accounts of such body corporate or public company, shall be guilty of a misdemeanor.

Destroying, Altering, Mutilating, or Falsifying Books.—By s. 83, whosoever, being a director, manager, public officer, or member of any body corporate or public company, shall, with intent to defraud, destroy, alter, mutilate or falsify any book, paper, writing or valuable security belonging to the body corporate or public company, or make or concur in the making of any false entry, or omit or concur in omitting any material particular, in any book of account or other document, shall be guilty of a misdemeanor.

Publishing Fraudulent Statements.—By s. 84, whosoever, being a director, manager, or public officer of any body corporate or public company, shall make, circulate or publish, or concur in making, circulating or publishing, any written statement or account which he shall know to be false in any material particular, with intent to deceive or defraud any member, shareholder, or creditor of such body corporate, or public company, or with intent to induce any person to become a shareholder or partner therein, or to intrust or advance any property to such body corporate or public company, or to enter into any security for the benefit thereof, shall be guilty of a misdemeanor.

4. DISCLOSURE OF CIRCUMSTANCES.

Statute.—By 24 & 25 Vict. c. 96, s. 85, nothing in any of the last ten preceding sections of this act contained shall enable or entitle any person to refuse to make a full and complete discovery by answer to any bill in equity, or to answer any question or interrogatory in any civil proceeding in any court, or upon the hearing of any matter in bankruptcy or insolvency; and no person shall be liable to be convicted of any of the misdemeanors in any of the said sections mentioned by any evidence whatever in respect of any act done by him, if he shall at any time previously to his being charged with such offence have first disclosed such act on oath, in consequence of any compulsory process of any court of law or equity, in any action, suit or proceeding which shall have been bona fide instituted by any party aggrieved, or if he shall have first disclosed the same in any compulsory examination or deposition before any court, upon the hearing of any matter in bankruptcy or insolvency. (Former provisions, 7 & 8 Geo. 4, c. 29,

s. 52; 5 & 6 Vict. c. 39, s. 6, and 20 & 21 Vict. c. 54, s. 11.)

In what Cases Applicable.—Semble, a disclosure of any illegal act to which the statute relates must, to be rendered available as a protection, be made *bonâ fide*, and must not be a mere voluntary statement made for the express purpose of screening the person making it from the consequences of his acts. *Strahan, Paul and Bates, In re*, 7 Cox, C. C. 85.

An agent intrusted with a bill of lading, without authority of his principals, and in violation of good faith, deposited it with bankers for his own benefit, as a security for advances. He was charged with this offence before a magistrate. The depositions which were taken in support of the charge contained ample evidence to support it. Having become bankrupt, he was taken by his creditors and examined respecting the subject-matter of the charge before a commissioner in bankruptcy, and then made a statement in every respect in accordance with the evidence in the depositions. He was afterwards indicted on the same charge. On the trial, his examination in bankruptcy was offered by him as a defence, as shewing that he had disclosed the act before a commissioner in bankruptcy previously to being indicted for the offence, and that therefore he was not liable to conviction, by virtue of 5 & 6 Vict. c. 39, s. 6. This evidence of a disclosure was held to be admissible under not guilty. *Reg. v. Sheen*, Bell, C. C. 97; 8 Cox, C. C. 143; 28 L. J., M. C. 91; 5 Jur., N. S. 151; 7 W. R. 255.

The majority of the court was, however, of opinion, that as the agent only stated before the commissioner matter which had been previously known, and previously proved before the magistrate, he had not made any disclosure within the meaning of the statute, and consequently was not entitled to protection. The minority held, that as the statement of the agent was obtained on a compulsory examination, instituted *bonâ fide* by the creditors for their own interest, it was a disclosure before a commissioner within the act, notwithstanding the previous publicity of the matter there inquired into. *Id.*

XVI. FALSE PRETENCES AND CHEATS.

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1. STATUTE.

By 24 & 25 Vict. c. 96, s. 88, *whosoever shall by any false pretence obtain from any other person any chattel, money or valuable security, with intent to defraud, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for the term of three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (Previous enactment, 7 & 8 Geo. 4, c. 29, s. 53, repealed by 24 & 25 Vict. c. 95.)*

Provided, that if upon the trial of any person indicted for such misdemeanor it shall be proved that he obtained the property in question in any such manner as to amount in law to larceny, he shall not by reason thereof be entitled to be acquitted of such misdemeanor; and no person tried for such misdemeanor shall be liable to be afterwards prosecuted for larceny upon the same facts.

By 24 & 25 Vict. c. 96, s. 89, *whosoever shall by any false pretence cause or procure any money to be paid, or any chattel or valuable security to be delivered to any other person for the use or benefit or on account of the person making such false pretence, or of any other person, with intent to defraud, shall be deemed to have obtained such money, chattel, or valuable security within the meaning of the last preceding section.*

2. GENERAL PRINCIPLES.

Existing Fact—What is.]—The prisoner obtained money by representing that he was collecting information for a new county directory that W. & Co. were getting up, and that by paying one shilling the prosecutor could have his name inserted in large type, and would receive other advantages. There were several similar charges. W. & Co., an existing firm, were now getting up a new county directory, and the prisoner was not employed by them to canvass or collect information. The prisoner's defence before the magistrate (in evidence at the trial) was, that he was going to bring out a directory, and that he was not aware he was doing wrong in using the name of W. & Co. At the trial the prisoner's counsel urged that there was no misrepresentation of any existing fact, but only a promise to do something in future.—Held, that this was a misrepresentation of an existing fact. *Reg. v. Speed*, 15 Cox, C. C. 24; 46 L. T. 174; 46 J. P. 451. See *Reg. v. Woolley*, 3 C. & K. 98; 1 Den. C. C. 559; T. & M. 279; 4 New Sess. Cas. 341; 4 Cox, C. C. 191; 19 L. J., M. C. 165; 14 Jur. 465.

The defendant was convicted of attempting to obtain money upon the false pretence that he had power to communicate with the spirits of deceased

and other persons, although such persons were not present in the place where he then was; and also that he had power to produce and cause to be present, such spirits as aforesaid in a materialized or other form; and also that divers musical instruments, by the sole means of such spirits so caused to be present, produced musical and other sounds:—Held, that the defendant was thereby charged with falsely pretending an existing fact; and that the indictment so alleging the false pretence was good and valid within 24 & 25 Vict. c. 96. *Reg. v. Lawrence*, 36 L. T. 404.

Although to constitute the statutable offence of obtaining money by means of false pretences the pretence must be false at the time: Semble, it need not necessarily be of some alleged existing fact, capable of being disproved by positive testimony, but may depend on the *bonâ fide* intention and willingness of the defendant at the time of entering into a contract to perform it, or to do some act at a future period. *Reg. v. Jones*, 6 Cox, C. C. 467.

The prosecutor lent 10*l.* to the prisoner on the false pretence that he was going to pay his rent, and if the prisoner had not told him that he was going to pay his rent, the prosecutor would not have lent the money:—Held, that this was not a false pretence of any existing fact to warrant a conviction. *Reg. v. Lee*, 9 Cox, C. C. 304; L. & C. 309; 8 L. T. 437; 11 W. R. 761.

To have constituted an offence within 30 Geo. 2, c. 24, s. 1, money or goods must have been obtained by a false pretence with an intention to defraud; but the pretence might have related to a future transaction. *Reg. v. Young*, 1 Leach, C. C. 505; 2 East, P. C. 82, 833; 3 T. R. 98.

— **Combined with Future Promises.**—Where an indictment charges a false pretence of an existing fact calculated to induce the confidence which led to the prosecutor's parting with his property, though mixed up with false pretences as to the prisoner's future conduct, it is sufficient. *Reg. v. Bates*, 3 Cox, C. C. 201.

Where the false pretence is as to the status of the party at the time, or as to any collateral fact supposed to be then existing, it will equally support an indictment. *Ib.*

A false pretence as to an existing, essential fact will sustain an indictment for obtaining money by false pretences, although it is united with false promises, which alone would not have supported the conviction. *Reg. v. Jennison*, L. & C. 157; 9 Cox, C. C. 158; 31 L. J., M. C. 146; 8 Jur., N. S. 442; 6 L. T. 256; 10 W. R. 488.

Money was obtained by the prisoner from an unmarried woman on the false representations that he was a single man, and that he would furnish a house with the money, and would then marry her:—Held, that the false representation of an existing fact (that he was a single man) was sufficient to support a conviction for false pretences, although the money was obtained by that representation, united with the promise to furnish a house and then marry her. *Ib.*

A fraudulent misrepresentation of an existing matter of fact, accompanied by an executory promise to do something at a future period, as that the prisoner had bought certain skins, and would sell them to the prosecutor, is a false pretence within the statute, although it appears that the promise, as well as such misrepresentations of fact, induced the prosecutor to part with the money. *Reg. v. West*, Dears. & B. C. C. 575; 8

Cox, C. C. 12; 27 L. J., M. C. 227; 4 Jur., N. S. 514.

A. was indicted for obtaining goods by false pretences. He obtained the goods from the prosecutor by pretending that he wanted them for S., whom he represented as living at N., and being a person to whom he would trust 1,000*l.*, and who went out twice a year to New Orleans to take goods to his sons. The jury found that all these representations were false, and that the prosecutor, believing that A. was connected with S., and employed by him to obtain the goods, contracted with A., and not with the supposed S., and delivered the goods to A. for himself, and not for S.:—Held, that A. was rightly convicted. *Reg. v. Archer*, Dears. C. C. 449; 6 Cox, C. C. 515; 3 C. L. R. 623; 1 Jur., N. S. 479.

An attorney, who had appeared for a person who was fined 2*l.* on a summary conviction, called on a person's wife and told her that he had been with another person, who was fined 2*l.* for a like offence to Mr. B. and Mr. L., and that he had prevailed upon Mr. B. and Mr. L. to take 1*l.* instead of 2*l.*, and that if she would give him 1*l.* he would go and do the same for her. She gave the attorney a sovereign, and afterwards paid him for his trouble. It was proved that the attorney never applied to either Mr. B. or Mr. L. respecting either of the fines, and that both were afterwards paid in full:—Held, that he was guilty of obtaining money by false pretences. *Reg. v. Asterley*, 7 C. & P. 191.

A defendant was tried upon an indictment for obtaining money by false pretences, in which it was alleged that she had represented that she kept a shop, and that the prosecutrix might go and live with her till she got a situation. It was proved that the defendant did not keep a shop, and the prosecutrix stated that she lent the defendant the money because the latter had said that she kept the shop, and that she, the prosecutrix, should have the money when she got home with her. The jury returned a special verdict, finding the defendant guilty of fraudulently obtaining the money, the prosecutrix parting with it under the belief that the defendant kept a shop, and that the prosecutrix should have it when she went home with her:—Held, that the defendant was properly convicted of obtaining money by false pretences. *Reg. v. Fry*, Dears. & B. C. C. 449; 7 Cox, C. C. 394; 27 L. J., M. C. 68; 4 Jur., N. S. 266.

— **Express Words not Necessary.**—It is not necessary that the false pretences should be made in express words, if it can be inferred from all the circumstances attending the obtaining of the property. *Reg. v. Giles*, L. & C. 502; 10 Cox, C. C. 44; 34 L. J., M. C. 51; 11 Jur., N. S. 119; 11 L. T. 643; 13 W. R. 327.

Hewers and putters in a colliery had tokens differently marked, which they placed on the tubs of coal drawn up the pit, and which were then taken off and put into a box, and their wages calculated according to the number of tokens sent up by them. The putter fetched the empty tub to the hewer, and took it when full to the station to be drawn up to the bank; before the tub was filled he placed his token on it, to denote the sum he was entitled to for his labour in putting and removing the tub to the station, and the hewer put his token also to denote the amount he was entitled to for hewing the coal and filling the tub. A hewer removed the

putter's token after the tub was brought to him and substituted one of his own, and then put an additional token of his own for hewing and filling the tub. The tub was then drawn up, and the two tokens thrown into the box. The contents of the box were then taken away by the tokenman, and the accounts of the different workmen made up according to the number of tokens found with their initials on. In that way the hewer obtained money for hewing and filling two tubs of coal instead of one only:—Held, that this amounted to an indictable false pretence. *Reg. v. Hunter*, 10 Cox, C. C. 642; 17 L. T. 321; 16 W. R. 342.

A., employed in a tannery, clandestinely removed certain skins of leather from the warehouse to another part of the tannery, for the purpose of delivering them to the foreman and getting paid for them as if they had been his own work:—Held, that this did not amount to larceny, but to an attempt to commit the misdemeanor of obtaining money by false pretences. *Reg. v. Holloway*, 1 Den. C. C. 370; T. & M. 48; 3 New Sess. Cas. 410; 2 C. & K. 942; 18 L. J., M. C. 60; 13 Jur. 86.

If a person at Oxford, who is not a member of the University, goes to a shop for the purpose of fraud, wearing a commoner's cap and gown, and obtains goods; this appearing in a cap and gown is a sufficient false pretence to satisfy the statute, although nothing passes in words. *Reg. v. Barnard*, 7 C. & P. 784.

The prisoner, on entering the service of a railway company, signed a book of rules, a copy of which was given to him. One of the rules was, "No servant of the company shall be entitled to claim payment of any wages due to him on leaving the company's service until he shall have delivered up his uniform clothing." On leaving the service he knowingly and fraudulently delivered up, as part of his uniform, to an officer of the company, a great coat belonging to a fellow servant, and so obtained the wages due to him:—Held, that he was properly convicted of obtaining the money by false pretences. *Reg. v. Bull*, 13 Cox, C. C. 608; 36 L. T. 376.

It was a false pretence within 30 Geo. 2, c. 24, s. 1, where the prisoner obtained money from the keeper of a post-office, by assuming to be the person mentioned in a money order, which he presented for payment, though he did not make any false declaration or assertion in order to obtain the money. *Reg. v. Story*, R. & R. C. C. 81.

When Prosecutor knows Pretences are False—Attempt to Obtain.]—The prisoner wrote a begging letter to the prosecutor, in which, by certain false statements, he attempted to obtain money. The prosecutor sent the prisoner five shillings, but stated at the trial that he knew the pretences were false:—Held, that he might be convicted of an attempt to obtain money by false pretences. *Reg. v. Hensler*, 11 Cox, C. C. 570; 22 L. T. 691; 19 W. R. 108. See also *Reg. v. Keighley*, Dears. & B. C. C. 145; 7 Cox, C. C. 217.

An indictment for obtaining money by false pretences cannot be sustained, if the prosecutor when he parted with his money knew the representation to be false. *Reg. v. Mills*, 7 Cox, C. C. 263; Dears. & B. C. C. 205; 26 L. J., M. C. 79; 3 Jur., N. S. 447.

The defendant represented to the prosecutor that he had done a certain quantity of work, and

claimed a certain sum as due to him in respect of such work. The prosecutor paid him the amount claimed, although he knew that the representation was untrue:—Held, that this was not an obtaining money by means of false pretences. *Id.*

When Prosecutor might have known Pretence was False.]—A false pretence must be the false pretence of an existing fact, and if the person to whom it is made is defrauded by it, it makes no difference that he might have known that the pretence was false, or that it is not such a pretence as would be likely to defraud a person of ordinary caution. *Reg. v. Woolley*, 3 C. & K. 98; 4 Cox, C. C. 191; 1 Den. C. C. 559; T. & M. 279; 4 New Sess. Cas. 341; 19 L. J., M. C. 165; 14 Jur. 465.

Therefore, where A., the secretary of a lodge of Oddfellows, told B., a member of the lodge, that he owed the society 13s. 9d., when in fact B. only owed 2s. 3d.; and A., by this false pretence, obtained the money of B.:—Held, that this was an obtaining of money by false pretences. *Id.*

When too Remote.]—The prisoner was charged with obtaining a prize in a certain swimming race by false pretences. He obtained his competitor's ticket for the race by representing himself to be member of a certain club, and by a letter purporting to be written by the secretary of that club. On the faith of these representations, which turned out to be false, he was allowed twenty seconds' start in the race, and won the prize:—Held, by the Common Serjeant, after consulting Stephen, J., that the false pretences were too remote, and that the count charging them could not be sustained. *Reg. v. Larner*, 14 Cox, C. C. 497.

An indictment alleged that the defendant falsely pretended that he had a lot of trucks of coal at a railway station on demurrage, and that he required forty coal bags. The evidence was that he saw the prosecutor and gave him his card, "J. Willot & Co., timber and coal merchants," and said that he was largely in the timber and coal way, and inspected some coal bags, but objected to the price. The next day he called again, shewed the prosecutor some correspondence, and said that he had a lot of trucks of coal at the railway station under demurrage, and that he wanted some coal bags immediately. The prosecutor had only forty bags ready, and it was arranged that the defendant was to have them, and pay for them in a week. They were delivered to the defendant, and the prosecutor said he let the defendant have the bags in consequence of his having the trucks of coal under demurrage at the station. There was evidence as to his having taken premises, and doing a small business in coal, but he had no trucks of coal on demurrage at the station. The jury convicted the defendant:—Held, that the false pretence charge was not too remote to support the indictment, and that the evidence was sufficient to sustain it. *Reg. v. Willot*, 12 Cox, C. C. 68; 24 L. T. 758.

When a contract has been entered into by reason of false representations, and goods or money obtained under the contract, it is too remote to charge the obtaining of the goods or money by the false pretences. *Reg. v. Bryan*, 2 F. & F. 567.

A., by means of false pretences, engaged with the prosecutrix for lodging at 10s. a week. He accordingly became a lodger in her house, and a few days afterwards expressed a wish to become a boarder. He was then supplied with board as well as lodging at 1l. 1s. per week. He was afterwards indicted for obtaining goods (the board) by means of false pretences, and convicted:—Held, that the conviction could not be supported, as the goods were supplied too remotely from the false pretence. *Reg. v. Gardner*, Dears. & B. C. C. 40; 7 Cox, C. C. 136; 25 L. J., M. C. 100; 2 Jur., N. S. 598.

Obtaining Gift of Money.]—Obtaining a gift of money by means of false statements is obtaining money by false pretences. *Reg. v. Jones*, T. & M. 270; 4 New Sess. Cas. 353; 1 Den. C. C. 551; 3 C. & K. 346; 4 Cox, C. C. 198; 19 L. J., M. C. 162; 14 Jur. 533.

A begging letter, making false representations as to the condition and character of the writer, by means of which money is obtained, is a false pretence. *Ib.*

Intention to Pay for Goods when able.]—The crime of obtaining goods by false pretences is complete, although at the time when the prisoner made the pretence, and obtained the goods, he intended to pay for them when it should be in his power to do so. *Reg. v. Naylor*, 1 L. R., C. C. 4; 35 L. J., M. C. 61; 11 Jur., N. S. 910; 13 L. T. 381; 14 W. R. 58; 10 Cox, C. C. 151.

Question on whose behalf Goods Ordered.]—Where a prisoner, being employed at a hospital, wrote to the prosecutor, as manager, for a small quantity of linen, not saying it was for the hospital, and in point of fact he was not manager, and the goods were really ordered for himself, but not sent, on an indictment for an attempt to obtain them, the question left to the jury was, whether he ordered the goods as for and on behalf of the hospital or in his own name, there being no evidence of an intention to pay cash, but evidence of its absence. *Reg. v. Franklin*, 4 F. & F. 94.

Prosecutor Laying Trap for Prisoner.]—If a party obtains money by a false pretence, knowing it to be false at the time, it is no answer to shew that the party from whom he obtained the money laid a plan to entrap him into the commission of the offence. *Rea v. Ady*, 7 C. & P. 140.

Intention to Permanently Deprive Owner of Chattel.]—To constitute an obtaining by false pretences, it is essential that there should be an intention to deprive the owner wholly of the property in the chattel, and, consequently, the obtaining by false pretences the use of a chattel for a limited time only, without an intention to deprive the owner wholly of the chattel, is not an obtaining by false pretences within 24 & 25 Vict. c. 96, s. 88. *Reg. v. Kilham*, 1 L. R., C. C. 261; 39 L. J., M. C. 109; 22 L. T. 625; 18 W. R. 957; 11 Cox, C. C. 561.

With what Object.]—To constitute the offence of obtaining any chattel, money, or valuable security by false pretences, the obtaining must be in accordance with the wish, or for the advantage, or for the purpose of effecting some object

of the party making the false pretence. *Reg. v. Garrett*, Dears. C. C. 232; 6 Cox, C. C. 260; 2 C. L. R. 106; 23 L. J., M. C. 20; 17 Jur. 1060.

Property Obtained before False Pretence.]—A carrier, having ordered a cask of ale, said, after he had possession of it, "This is for W.:"—Held, that an indictment for obtaining it by falsely pretending that he was sent for it by W. could not be sustained. *Reg. v. Brooks*, 1 F. & F. 502.

Property parted with by reason of Inducement Charged.]—A prisoner was charged with obtaining a filly by the false pretence that he was a gentleman's servant, and had lived at Brecon, and had bought twenty horses in Brecon fair. It appeared that he bought the filly of the prosecutor for 11l., making him this statement, which was false, and also telling him that he would come down to the Cross Keys and pay him. The prosecutor stated that he parted with his filly because he expected the prisoner would come to the Cross Keys and pay him, and not because he believed that the prisoner was a gentleman's servant:—Held, that if the prosecutor did not part with his filly by reason of the false pretence charged, or any part of it, the prisoner must be acquitted. *Rea v. Dale*, 7 C. & P. 352.

Sufficiency and Character of False Pretence.]—An indictment charged that the prisoner falsely pretended that he had got a carriage and pair, and expected it down to T. that day or the next, and that he had a large property abroad. The evidence was that he was at E., assuming to be a man of position and wealth, but was in a destitute condition, and could not pay his hotel and other bills; and that three days afterwards he came to T. and induced the prosecutor to part with goods on the representation that he had just come from abroad, and had shipped a large quantity of wine to R. from England, and expected his carriage and pair to come down, and that he had taken a large house at T. and was going to furnish it:—Held, that the false pretences charged were sufficient in point of law, and also that the evidence was sufficient to sustain a conviction. *Reg. v. Howarth*, 11 Cox, C. C. 588; 23 L. T. 503.

A money-lender having a claim for a small sum against a borrower for money lent and high interest, caused an attorney to issue process for a sum double the amount, making up the difference by items charged on various pretences, and after receiving payment from a third party of the sum lent, so that only a sum of 5l. remained due for interest, still prosecuted the suit for the whole amount indorsed on the process, and then tried to get from the debtor a charge on property of far greater value, and represented to the third party that the whole sum claimed was really due. The money-lender and the attorney being indicted for attempting to obtain money from the third party by means of false pretences, it was held, that there was a case for the jury; and that if the jury believed the two combined together to enforce by legal process payment of sums they knew not to be due, and falsely represented them to be due, in order to obtain payment, they were liable to be convicted, as they accordingly were. *Reg. v. Taylor* (No. 1), 15 Cox, C. C. 265.

On a motion for a new trial on behalf of two defendants, an attorney and his client, indicted for attempting to obtain money by false pretences, there being evidence that they combined together to enforce, by means of the abuse of legal process, payment of sums they must have known not to be due, and also made false representations with that object:—Held, that there was evidence for the jury on the charge, that a direction to the jury that if they were satisfied of these facts they ought to convict was correct, and that the conviction, therefore, was right. *Reg. v. Taylor* (No. 2), 15 Cox, C. C. 268.

The prosecutor lent money to the prisoner at interest, on the security of a bill of sale on furniture, a promissory note of the prisoner and another person, and a declaration made by the prisoner that the furniture was unencumbered. The declaration was untrue at the time it was handed to the prosecutor, the prisoner having a few hours before given a bill of sale for the furniture to another person, but not to its full value:—Held, that there was evidence in support of a charge of obtaining money by false pretences. *Reg. v. Meakin*, 11 Cox, C. C. 270; 20 L. T. 544; 17 W. R. 683.

A., by falsely representing that a house and some shops had been built upon certain land, obtained from the prosecutor an advance of money. A. deposited the lease of the land, signed an agreement to execute a mortgage and executed a bond as security for the money:—Held, that he was rightly convicted of obtaining money by false pretences. *Reg. v. Burgon*, Dears. & B. C. C. 11; 7 Cox, C. C. 131; 25 L. J., M. C. 105; 2 Jur., N. S. 596.

A. owed B. a debt, of which B. could not get payment. C., a servant of B., went to A.'s wife and obtained two sacks of malt from her, saying that B. had bought them of A. C. knew this to be false, but took the malt to B., his master, to enable him to pay himself the debt:—Held, that if C. did not intend to defraud A., but merely to put it into his master's power to compel A. to pay him a just debt, C. ought not to be convicted of obtaining the malt by false pretences. *Reg. v. Williams*, 7 C. & P. 354.

B. was indicted for having falsely pretended that he was Mr. H., who had cured Mrs. C. at the Oxford Infirmary, and thereby obtaining 5s. with intent to defraud G. P. B. made the pretence, and thereby induced the prosecutor to buy, at the expense of 5s., a bottle containing something which he said would cure the eye of the prosecutor's child. It was proved that B. was not Mr. H.:—Held, that this was a false pretence. *Reg. v. Bloomfield*, Car. & M. 537; 6 Jur. 224.

A person who makes a false pretence of having a power to do something, whether the power is physical, moral, or supernatural, for the purpose of obtaining money or goods, is indictable for false pretences. *Reg. v. Giles*, L. & C. 502; 10 Cox, C. C. 44; 34 L. J., M. C. 51; 11 Jur., N. S. 119; 11 L. T. 643; 13 W. R. 327.

A pretence that a person would do an act that he did not mean to do (as a pretence to pay for goods on delivery), was not a false pretence within 30 Geo. 2, c. 24, s. 1. *Reg. v. Goodhall*, R. & R. C. C. 461.

But pretending to have been intrusted by one to take his horses from Ireland to London, and to have been detained by contrary winds till all his money was expended, was within 30 Geo. 2,

c. 24, s. 1. *Reg. v. Villeneuve*, 2 East, P. C. 830.

A pretence to a parish officer, as an excuse for not working, that the party has not clothes, when he really has, although it induces the officer to give him clothes, was not obtaining goods by false pretences within 30 Geo. 2, c. 24, s. 1. *Reg. v. Wakeling*, R. & R. C. C. 504.

The offence of obtaining money under false pretences, created by 30 Geo. 2, c. 24, s. 1, was complete only where the money was obtained. *Reg. v. Buttery*, cited 5 D. & R. 616; 3 B. & C. 700.

It is a false pretence if a carrier obtains the carriage-money by pretending to have delivered the goods and lost the bailee's receipt for them. *Reg. v. Airey*, 2 East, P. C. 831; 2 East, 30; S. P., *Reg. v. Coleman*, 2 East, P. C. 672.

3. IN RESPECT OF WHAT CHATTELS OR SECURITIES.

Dogs.—Dogs, not being the subject of larceny at common law, were not chattels within 7 & 8 Geo. 4, c. 29, s. 53. *Reg. v. Robinson*, Bell, C. C. 34; 28 L. J., M. C. 58; 5 Jur., N. S. 203; 32 L. T. 502; 7 W. R. 203.

Valuable Secerity.—G., secretary to a burial society, was indicted for falsely pretending that a death had occurred, and so obtaining from the president an order on the treasurer in the following form: "Bolton United Burial Society, No. 23, Bolton, September 1st, 1853. Mr. A. Entwistle, treasurer; please to pay the bearer 2l. 10s., Greenhalgh, and charge the same to the society. Robert Lord, Benjamin Beswick, president:—"Held, that this was a valuable security under 7 & 8 Geo. 4, c. 29, s. 53, as explained by s. 5. *Reg. v. Greenhalgh*, 1 Dears. C. C. 267; 6 Cox, C. C. 257.

Bank Notes.—Bank notes were not money, goods, wares or merchandises, within 30 Geo. 2, c. 24, s. 1. *Reg. v. Hill*, R. & R. C. C. 190. But 7 & 8 Geo. 4, c. 29, s. 53, extended 30 Geo. 2, c. 24, to persons obtaining, by false pretences, any valuable security.

Ticket.—B. was indicted for obtaining by false pretences from a railway company a printed ticket, with intent to defraud the company of the same; the ticket enabled the prisoner to travel free from B. to H., and was to be given back to the company at H.:—Held, that the ticket was a chattel within 7 & 8 Geo. 4, c. 29, s. 53, and that the attempt to defraud the company of the same was not affected by the fact of the ticket having to be returned at the end of the journey. *Reg. v. Boulton*, 1 Den. C. C. 508; 2 C. & K. 917; 3 Cox, C. C. 576; 19 L. J., M. C. 67; 13 Jur. 1034.

Chattel not in Existence at time of Pretence made.—A conviction for obtaining a chattel by false pretences is good, although the chattel is not in existence at the time of the pretence being made, provided the subsequent delivery of the chattel is directly connected with the false pretence. *Reg. v. Martin*, 1 L. R., C. C. 56; 36 L. J., M. C. 20; 15 L. T. 54; 15 W. R. 358; 10 Cox, C. C. 383.

4. AS TO THE QUANTITY OR WEIGHT OF ARTICLES OF MERCHANDIZE.

What is.—The defendant had contracted with the guardians of a poor law union to deliver loaves of a specified weight to any poor persons bringing a ticket from the relieving officer. The tickets were to be returned by the defendant at the end of each week, with a statement of the number of tickets sent back, whereupon he would be credited for the amount, and the money would be paid at the time stipulated in the contract. The defendant delivered to certain poor people who brought tickets loaves of less than the specified weight, returned the tickets with a note of the number sent, and obtained credit in account for the loaves so delivered, but before the time for payment had arrived the fraud was discovered:—Held, that the delivery of a less quantity of bread than that contracted for was a mere private fraud, no false weights or tokens having been used, and therefore not an indictable offence: that the defendant was properly convicted of attempting to obtain money, for although he had only obtained credit in account, and could not, therefore, have been convicted of the offence of actually obtaining money by false pretences, yet he had done all that was depending on himself towards the payment of the money, and was therefore guilty of the attempt: and that this was a case within 7 & 8 Geo. 4, c. 29, s. 53, because it was an attempt to obtain money by a false and fraudulent representation of an antecedent fact: it was not a mere sale of goods by a false pretence of their weight. *Reg. v. Eagleton*, Dears. C. C. 515; 6 Cox, C. C. 559; 24 L. J., M. C. 158; 1 Jur., N. S. 940.

The defendant agreed with the prosecutrix to sell and deliver to her a load of coals, at a certain price per cwt. He accordingly delivered a quantity of coals, to his knowledge weighing 14 cwt. He, however, falsely and fraudulently represented that the quantity he had delivered weighed 18 cwt., and thereby obtained the price of 18 cwt.:—Held, that he was properly convicted of the offence of obtaining money by false pretences. *Reg. v. Sherwood*, Dears. & B. C. C. 251; 26 L. J., M. C. 217; 3 Jur., N. S. 547.

A prisoner was convicted on an indictment for obtaining money by false pretences. The prosecutors bought of the prisoner and paid him for a quantity of coal, upon a false representation by him that there were 14 cwt., whereas, in fact, there were only 8 cwt., but so packed in the cart in which they were as to have the appearance of a larger quantity:—Held, that the false representation as to the quantity of coal was an indictable false pretence, and that the conviction was right. *Reg. v. Ragg*, Bell, C. C. 215; 8 Cox, C. C. 262; 29 L. J., M. C. 86; 6 Jur., N. S. 178; 1 L. T. 337; 8 W. R. 193.

If a man is selling an article by weight, and falsely represents the weight to be greater than it is, and thereby obtains payment for a quantity greater than that delivered, he is indictable for obtaining money by false pretences. *Secus*, if he is selling the article for a lump sum, and merely makes the false representation as to weight in order to induce the purchaser to conclude the bargain. *Reg. v. Ridgway*, 3 F. & F. 838.

A false affirmation of the weight of an article sold by weight, with intent to defraud, is indictable as a false pretence. *Reg. v. Lee*, L. &

C. 418; 9 Cox, C. C. 460; 32 L. J., M. C. 129; 10 L. T. 348; 12 W. R. 750.

Upon indictment for obtaining money by falsely pretending that certain loads of soot weighed certain tons, whereas they did not, the evidence was that the prisoners weighed at a public weighing machine some cart loads of what apparently was soot, but amongst which were bags of old bricks, and having obtained tickets of the weights, subsequently removed the bags containing bricks, and on selling the soot to the prosecutor represented to him that the weight ascribed in the tickets was the weight of what they sold:—Held, that this false representation of the weight was within the statute. *1b*.

An indictment charged, that H. R. having in his possession a certain weight of 28 lbs., did falsely pretend to C. that a quantity of coals which he delivered to C. weighed 16 cwt. (meaning 1792 lbs. weight), and were worth 1*l.*, and that the weight was 56 lbs.; by means of which he obtained a sovereign from C., with intent to defraud him of part thereof, to wit, 10*s.*; whereas the coals did not weigh 1792 lbs., and were not worth 1*l.*; and whereas the weight was not 56 lbs.; and whereas the coals were of the weight of 896 lbs. only, and were not worth more than 10*s.*; and whereas the weight was of 28 lbs. only. It was objected that all the pretences, except that respecting the weight, were false affirmations, and that, as to the weight, there was no allegation to connect the sale of the coals with the use of the weight. The defendant was convicted, and the conviction was held to be wrong. *Rea v. Reed*, 7 C. & P. 848.

5. AS TO THE QUALITY OR VALUE OF ARTICLES OF MERCHANDIZE.

Specific Fact stated which is untrue.—The prisoner induced the prosecutor to purchase a chain from him by fraudulently representing that it was 15-carat gold, when, in fact, it was only of a quality a trifle better than 6-carat, knowing at the time that he was falsely representing the quality of the chain as 15-carat gold:—Held, that the statement that the chain was 15-carat gold, not being mere exaggerated praise, or relating to a mere matter of opinion, but a statement as to a specific fact within his knowledge, was a sufficient false pretence to sustain an indictment for obtaining money under false pretences. *Reg. v. Ardley*, 1 L. R., C. C. 301; 40 L. J., M. C. 85; 24 L. T. 193; 19 W. R. 478; 12 Cox, C. C. 23.

On an indictment for obtaining money by false pretences, it was proved that the prisoner, a travelling hawker, represented to the prosecutor's wife that he was a tea-dealer from Leicester, and induced her to buy certain packages which he stated contained good tea, but three-fourths of the contents of which was not tea at all, but a mixture of substances unfit to drink and deleterious to health. The jury found that the prisoner knew the real nature of the contents of the packages, that it was not tea, but a mixture of articles unfit for drink, and that he designedly falsely pretended that it was good tea with intent to defraud; and the prisoner was convicted:—Held, that the conviction was right. *Reg. v. Foster*, 2 Q. B. D. 301; 46 L. J., M. C. 128; 36 L. T. 34; 13 Cox, C. C. 393.

A false representation that a stamp on a watch was the hall mark of the Goldsmiths' Company,

and that the number 18, part thereof, indicated that the watch was made of 18-carat gold, is an indictable offence, and is not the less so because accompanied by a representation that the watch was a gold one, and some gold was proved to have been contained in its composition. *Reg. v. Suter*, 10 Cox, C. C. 577; 17 L. T. 177; 16 W. R. 141.

A man went into a pawnbroker's shop in the middle of the day, and laid down eleven thimbles on the counter, saying, "I want 5s. on them;" the pawnbroker's assistant asked the man if they were silver, and he said they were. The assistant tested them, and found they were not silver, and in consequence did not give the man any money, but sent for a policeman, and gave him into his custody:—Held, that the conduct of the man who presented the thimbles amounted to an attempt to commit the statutable misdemeanor of obtaining money under false pretences, and by consequence that if the money had been obtained that statutable offence would have been complete. *Reg. v. Ball*, Car. & M. 249.

A. falsely pretended to a pawnbroker that a chain was silver. The pawnbroker lent A. 10s. on the chain, without placing any reliance upon the statement of A., but relying on his own examination and test. The chain was made of a composition worth about one farthing an ounce:—Held, that he was properly convicted of attempting to obtain money by false pretences, the statement being a false pretence within the statute. *Reg. v. Roebuck*, Dears. & B. C. C. 24; 7 Cox, C. C. 126; 25 L. J., M. C. 101; 2 Jur., N. S. 597.

A wilful misrepresentation of a definite fact with intent to defraud, cognizable by the senses—where the seller, by manoeuvring, contrives to pass off tasters of cheese as if extracted from the cheese offered for sale, whereas it is not—is a false pretence. *Reg. v. Goss*, Bell, C. C. 208; 8 Cox, C. C. 264; 29 L. J., M. C. 86; 6 Jur., N. S. 178; 1 L. T. 337; 8 W. R. 193.

Knowingly exposing to sale and selling wrought gold under the sterling alloy, as and for gold of the true standard weight, which is indictable in a goldsmith, is a private imposition only in a common person. *Reg. v. Bower*, Cowp. 323.

B. was in the habit of selling baking powders, wrapped in printed wrappers, entitled "B's Baking Powders," and having his printed signature at the end. The prisoner got printed a quantity of wrappers, in imitation of those of B., only leaving out B.'s signature, and sold spurious powders wrapped up in these labels as B.'s powders:—Held, that the prisoner was not guilty of forging the wrappers, or uttering forged wrappers, though he might be indictable for the fraud, on a charge of obtaining money by false pretences. *Reg. v. Smith*, Dears. & B. C. C. 566; 8 Cox, C. C. 32; 27 L. J., M. C. 225; 4 Jur., N. S. 1003.

An indictment charged that the defendant knowingly and falsely pretended that a horse was sound, and that he himself was a farmer, at O., negating both pretences in the usual way. The defendant was convicted, but a case reserved in which, after stating that the various allegations in the indictment were proved, and that the defence was that this was a case of giving a false warranty, and therefore not indictable, the question was put, whether the conviction could be sustained. The court having directed an amendment, the facts proved were

set out more specifically; but it was not stated as a fact that the defendant knew the horse to be unsound, though evidence was stated from which that inference might be drawn; nor was it stated what direction had been given to the jury:—Held, that, as the case was framed, the conviction must be quashed; as the court, not knowing what direction had been given, could not answer the question put in the affirmative; and as it was consistent with the case that the jury might have been told that even if the defendant did not know that the horse was unsound, he might be convicted upon the other false pretence alone. *Reg. v. Keighley*, Dears. & B. C. C. 145; 7 Cox, C. C. 217.

Exaggerated Praise not Sufficient to Constitute.]—A simple misrepresentation of the quality of goods is not a false pretence, provided the goods are in specie that which they are represented to be. *Reg. v. Bryan*, Dears. & B. C. C. 265; 7 Cox, C. C. 313; 26 L. J., M. C. 84; 3 Jur., N. S. 620.

For the purpose of procuring advances of money by way of pledge, a party produced spoons to the prosecutors, who were pawnbrokers, and falsely and fraudulently stated that "they were of the best quality; that they were equal to Elkington's A; that the foundation was of the best material; and that they had as much silver on them as Elkington's A:—Held, that the representations being merely as to the quality of the articles, were not false pretences within the statute, as the articles delivered to the pawnbrokers were the same in specie as he had professed them to be, though of inferior quality to what he had stated. *Id.*

On the trial of an indictment for false pretences, it was proved that the prisoner offered a chain in pledge to a pawnbroker, and required money to be advanced upon it, representing that it was gold. On being tested it turned out to be a compound of brass, silver, and gold, but the gold was very minute in quantity:—Held, not a false pretence. *Reg. v. Lee*, 8 Cox, C. C. 233.

L. and W. induced the prosecutor to buy certain plated goods at an auction, at which L. was acting as auctioneer, for 7l., on the representation that they were the best silver plate, lined with gold, and worth 20l.; the foundation of the goods was Britannia metal, instead of nickel, as in the best goods, covered with a transparent film of silver, and they were worth only about 30s.:—Held, that there was no false pretence, and that an agreement between two persons to dispose of these goods in the way they were disposed of was not a conspiracy. *Reg. v. Levine*, 10 Cox, C. C. 374.

6. BY PROMISES OF MARRIAGE.

When it Lies.]—An indictment will lie for fraudulently obtaining goods under a pretence of a treaty of marriage. *Anon.*, Loft. 146.

An indictment for obtaining money from H. under the false pretence that the prisoner intended to marry H., and wanted the money to pay for a wedding-suit he had purchased, is not sufficient to sustain a conviction. *Reg. v. Johnston*, 2 M. C. C. 254.

A., obtaining money from the prosecutrix by falsely pretending that he was unmarried, that he would furnish a house with the money, and would then marry her, is properly convicted of

obtaining money under false pretences. *Reg. v. Jennison*, 9 Cox, C. C. 158; L. & C. 157; 31 L. J., M. C. 146; 8 Jur., N. S. 442; 6 L. T. 256; 10 W. R. 488.

Evidence.—The prisoner paid his addresses to the prosecutrix, and obtained a promise of marriage from her, which promise she afterwards refused to ratify. He then threatened her with an action, and by this means obtained money from her. During the whole of the transactions the prisoner had a wife. On an indictment against him for obtaining money under false pretences, the pretences laid were, first, that he was unmarried; and secondly, that he was entitled to bring and maintain his action against her for a breach of promise of marriage:—Held, per Lord Denman, C. J., and Maule, J., that the fact of the prisoner paying his addresses was sufficient evidence for the jury on which they might find the first pretence, that he was a single man and in a condition to marry; and, per Maule, J., that there was sufficient evidence on which to find the falseness of the other pretence, that he was entitled to maintain his action for breach of promise of marriage; and that such latter false pretence was a sufficient false pretence within the statute. *Reg. v. Copeland*, Car. & M. 516.

7. REPRESENTATIONS AS TO BUSINESS.

Question for Jury as to Prisoner's Meaning.]

—C. was convicted of obtaining potatoes by falsely pretending that he was then in a large way of business, that he was in a position to do a good trade in potatoes, and that he was able to pay for large quantities of potatoes as and when the same might be delivered to him. The evidence that C. had so pretended was the following letter written by him to the prosecutor:—"Sir,—Please send me one truck of regents and one truck of rocks as samples, at your prices named in your letter; let them be good quality, then I am sure a good trade will be done for both of us. I will remit you cash on arrival of goods and invoice. Yours, &c.—P.S. —I may say if you use me well I shall be a good customer. An answer will oblige saying when they are put on :"—Held, that the words of the letter were fairly and reasonably capable of a construction supporting the pretences charged, and that it was a question for the jury, whether the writer intended the prosecutor to put that construction upon them. *Reg. v. Cooper*, 2 Q. B. D. 510; 46 L. J., M. C. 219; 36 L. T. 671; 25 W. R. 696.

Deposit by Prosecutor as Security.]—On an indictment for obtaining money by false pretences, it appeared that the prisoner on engaging an assistant, from whom he received a deposit, represented to him that he was doing a good business, and that he had sold a good business for a certain large sum, whereas the business was worthless, and he had been bankrupt:—Held, that the indictment could not be sustained upon either of the representations. *Reg. v. Williamson*, 11 Cox, C. C. 328; 21 L. T. 444.

A prisoner obtained a sum of money from the prosecutor by pretending that he carried on an extensive business as an auctioneer and a house agent, and that he wanted a clerk, and that the money was to be deposited as security for the

prosecutor's honesty as such clerk. The jury found that the prisoner was not carrying on any such business at all:—Held, that this was an indictable false pretence. *Reg. v. Crab*, 11 Cox, C. C. 85; 18 L. T. 370; 16 W. R. 732.

Prisoner's Knowledge of Conduct of Business.]

—On an indictment for obtaining goods in a market by falsely pretending that a room had been taken at which to pay the market people for their goods, the jury found that the well-known practice was for buyers to engage a room at a public-house, and that the prisoner conveyed to the minds of the market people that she had engaged such a room, and that they parted with their goods on such belief:—Held, there being no evidence that the prisoner knew of such a practice, and the case being consistent with a promise only on her part to engage such a room and pay for the goods there, a conviction could not be sustained. *Reg. v. Burrows*, 11 Cox, C. C. 258; 20 L. T. 499; 17 W. R. 682.

8. ARISING OUT OF CONTRACTS.

Effect of False Pretence on.]—A false pretence knowingly made to obtain money is indictable, though the money is obtained by means of a contract which the prosecutor was induced to make by the false pretence of the prisoner. *Reg. v. Abbott*, 1 Den. C. C. 273; 2 C. & K. 630; 2 Cox, C. C. 430; S. P., *Reg. v. Dark*, 1 Den. C. C. 276; *Reg. v. Kendrick*, D. & M. 208; 5 Q. B. 49.

Delivering less than Contracted for.]—Delivering less beer in a cask than contracted for as the due quantity is not an indictable offence. *Reg. v. Wheatley*, 1 W. Bl. 273; 2 Burr. 1129.

Nor is delivering less oats than the quantity contracted for as the due quantity. *Reg. v. Dunnage*, 2 Burr. 1130.

Previous Sale of Goods Contracted to be Sold.]

—If one professes to sell an interest in property, and receives the purchase-money, the vendee taking the usual covenant for title; and it turns out that the vendor has in fact previously sold his interest in the property to a third person; this is not sufficient to support an indictment for obtaining money by false pretences. *Reg. v. Codrington*, 1 C. & P. 661.

Effect of Ratification of.]—The prisoner pretended to sell goods to A. which he pretended to have bought for him from B.; the goods having been sent by B. to A., the prisoner got the money from A.:—Held, not indictable for obtaining goods from B. by false pretences. *Reg. v. Martin*, 1 F. & F. 501.

The prisoner, by false and fraudulent representations made to the prosecutor, as to his business, customers and profits, induced the prosecutor to enter into a partnership with him, and to advance 500*l.*, as part of the capital of the concern; and the prosecutor, after such advance, recognized and acted upon such partnership:—Held, that this was not an obtaining of money by false pretences. *Reg. v. Watson*, Dears. & B. C. C. 348; 7 Cox, C. C. 364; 27 L. J., M. C. 18; 4 Jur., N. S. 14.

Partnership Accounts.]—The prisoner entered into partnership with the prosecutors, and it was subsequently agreed that he should travel about

the country to obtain orders, and have a commission upon all orders he might receive, such commission to be paid to him as soon as he received the orders, and to be payable out of the capital funds of the partnership before dividing any profits. He falsely represented to his partners that he had obtained a certain order, and in consequence was paid his commission thereon:—Held, that this was a mere matter of account between the partners, and that the prisoner was, therefore, not guilty of obtaining money by false pretences. *Reg. v. Evans*, 9 Cox, C. C. 238; L. & C. 252; 32 L. J., M. C. 38; 9 Jur., N. S. 184; 7 L. T. 507; 11 W. R. 125.

For Sale of Non-existent Chattel.]—A prisoner was indicted for obtaining by false pretences a spring-van. By false pretences, he induced the prosecutor to enter into a contract to build and deliver a van for a certain sum of money, and the prosecutor on the faith of those pretences built and delivered the van in pursuance of the original order, although the prisoner countermanded the order after the building and before the delivery:—Held, that, to bring the case within the statute, it is not necessary that the chattel should be in existence when the false pretence is made, but that the obtaining is within the statute if the pretence is a continuing one, so that the chattel is made and delivered in pursuance of the pretence; that the question whether the pretence is or is not such a continuing one, is one of fact for the jury, and that here there was evidence from which the jury might infer that it was such a continuing one. *Reg. v. Martin*, 1 L. R., C. C. 56; 36 L. J., M. C. 20; 15 L. T. 54; 15 W. R. 358; 10 Cox, C. C. 383.

9. BY MEANS OF FALSE ORDERS.

Of Innocent Agent.]—B. was one of many persons employed whose wages were paid weekly at a pay-table. On one occasion, when B.'s wages were due, the prisoner said to a little boy, "I will give you a penny if you will go and get B.'s money." The boy innocently went to the pay-table, and said to the treasurer, "I am come for B.'s money;" and B.'s wages were given to him. He took the money to the prisoner, who was waiting outside, and who gave the boy the promised penny:—Held, that the prisoner could not be convicted on the charge of obtaining the money from the treasurer by falsely pretending to the treasurer that he, the prisoner, had authority from B. to receive his money, or of obtaining it from the treasurer and the boy, by falsely pretending to the boy that he had such authority, or of obtaining it from the boy by the like false pretence to the boy; but that he might have been convicted on a count charging him with obtaining it from the treasurer, by falsely pretending to the treasurer that the boy had the authority from B. to receive the amount. *Reg. v. Butcher*, Bell, C. C. 6; 8 Cox, C. C. 77; 28 L. J., M. C. 14; 4 Jur., N. S. 1155; 32 L. T., O. S. 110; 7 W. R. 38.

Order given by Person having Authority to Order for Another.]—A surveyor of highways, having authority to order gravel for the roads, ordering gravel as usual, and applying it for his own use, is not liable to a charge of obtaining it by false pretences; nor for larceny, unless it

appears that he did not mean to pay for it. *Reg. v. Richardson*, 1 F. & F. 488.

Order given without Authority.]—An indictment that B. obtained twenty yards of carpet by falsely pretending that a certain person who lived in a large house down the street, and had had a daughter married some time back, had been at him about some carpet, and had asked him to procure a piece of carpet, whereas no such person had been at him about any carpet, nor had any such person asked him to procure any piece of carpet. The evidence was that B. obtained twenty yards of carpet by stating to the prosecutor, who was a shopkeeper in a village, that he wanted some carpeting for a family living in a large house in the village who had had a daughter lately married; that B. afterwards sold the carpeting so obtained to two different persons, and a lady was called, who lived in the village, whose daughter was married about a year previously, and who stated that she had not sent B. to the prosecutor's shop for the carpet:—Held, that there was a sufficient false pretence alleged and proved, and that it was sufficiently negated by the evidence. *Reg. v. Burnside*, Bell, C. C. 282; 8 Cox, C. C. 370; 30 L. J., M. C. 42; 6 Jur., N. S. 1310; 3 L. T. 311; 9 W. R. 37.

E. was convicted for stealing a cheque. He was a clerk to a savings bank, and received the cheque from the manager of the bank, upon a false representation that one of the depositors had given notice of withdrawal and for the purpose of handing it over to the depositor. According to the usual course of business, if a depositor could not attend at a proper time to receive the cheque, it was handed to E. as the agent of the depositor:—Held, that the case was one of false pretences and not larceny. *Reg. v. Essex, Dears. & B. C. C. 371*; 7 Cox, C. C. 384; 27 L. J., M. C. 20; 4 Jur., N. S. 16.

An indictment charged that the prisoner was living separately from her husband, and receiving an income from him for her separate maintenance under a deed of separation, which stipulated that he should not be liable for her debts; and that she falsely pretended to U., a servant of W., that she was living under the protection of her husband, and was authorized to apply to W. for goods on the credit of her husband, and that he was willing to pay for them; and that she wanted them to furnish a house in his occupation. It was proved that on the 4th of August she called at W.'s shop, and on being served by U., selected certain goods, and, being asked for a deposit, said it was a cash transaction, that her husband would give a cheque as soon as the goods were delivered. The deed was proved, and it was also proved that the annuity covenanted to be paid by the husband was duly paid; that the house which she gave as her address, and which was found shut up after the goods had been sent to it, had been taken by her whilst in company with a man with whom she had been living as his wife from the middle of July till the end of August:—Held, that there was abundant evidence to support a conviction. *Reg. v. Davis*, 11 Cox, C. C. 181; 19 L. T. 325; 17 W. R. 127.

Effect of Forged Order.]—A person who obtained goods on delivering a forged letter—"Please to let the bearer, W. T., have for J. R. four yards of linen," signed J. R., was not indicted.

able for obtaining goods by false pretence, as this was uttering a forged request for the delivery of goods, which was a felony under 11 Geo. 4 & 1 Will. 4, c. 66, s. 10. *Reg. v. Evans*, 5 C. & P. 553.

10. BY MEANS OF FALSE ACCOUNTS.

Statute.—By 38 & 39 Vict. c. 24 (which by s. 4 may be cited as The Falsification of Accounts Act, 1875), s. 1, *if any clerk, officer or servant, or any person employed or acting in the capacity of a clerk, officer or servant, shall wilfully and with intent to defraud, destroy, alter, mutilate or falsify any book, paper, writing, valuable security or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or shall wilfully and with intent to defraud, make or concur in making any false entry in, or omit or alter, or concur in omitting or altering, any material particular from or in any such book, or any document or account, then in every such case the person so offending shall be guilty of a misdemeanor, and be liable to be kept in penal servitude for a term not exceeding seven years, or to be imprisoned with or without hard labour for any term not exceeding two years.*

By s. 2, *it shall be sufficient in any indictment under the act to allege a general intent to defraud, without naming any particular person intended to be defrauded.*

Larger Sum of Money Obtained.—A workman, employed by clothiers, was to keep an account of the number of shearmen employed, and the amount of their earnings and wages, which he was to deliver weekly to a clerk, in writing, who paid him the amount; he delivered in a false account, charging for more work, and of other men, than was actually done, by which he obtained a larger sum than was actually due:—Held, an obtaining money under false pretences, within 30 Geo. 2, c. 24, because without the false pretence he would not have obtained the credit, and it was not like a case of money paid generally on account. *Reg. v. Mitchell*, 2 East, P. C. 830.

Part of Total Sum only Appropriated.—A., the servant of B., rendered an account to B. of 14l. 1s. 2d., as due from A. to his workmen, and B. gave A. a cheque for the amount. All that sum was so due except 7s., which A. kept, when he got the cheque cashed, and paid the workmen the residue. In an indictment it was charged that by this false pretence, A. obtained the cheque from B., with intent to defraud him of the same. It was objected, that the intent was only to defraud B. of a part of the proceeds of the cheque. A. was convicted, and the judges held the conviction right, and that the evidence supported the count. *Reg. v. Leonard*, 2 C. & K. 514; 1 Den. C. C. 304; 3 Cox, C. C. 284.

Receipt Required.—A servant of A. applied to B. for payment of 17s. due from B. to A. B. refused to pay it without A.'s receipt. The servant went away and returned with this document, whereupon B. paid the debt:—Held, a question for the jury, whether the servant tendered the receipt as the handwriting of A., which would make him liable on this indictment, or as his own, which would make his act a false

pretence. *Reg. v. Inder*, 1 Den. C. C. 325; 2 C. & K. 635.

False Pretences or Larceny.—It was the prisoner's duty, as bailiff to the prosecutor, to pay and receive moneys. Upon an account rendered of such payments and receipts, it appeared he had charged his master with five payments of 1l. 8s., instead of 1l. 4s., the sums he had actually paid. There was also a similar over-charge of two other amounts:—Held, that the prisoner was wrongly convicted of larceny, the offence, if any, being that of obtaining money by false pretences. *Reg. v. Green*, Deans. C. C. 323; 6 Cox, C. C. 296; 2 C. L. R. 603; 18 Jur. 158.

It was the duty of the prisoner, who was a servant of the prosecutors, in the absence of their chief clerk, to purchase and pay for, on behalf of his masters, any kitchen stuff brought to their premises for sale. On one occasion he falsely stated to the chief clerk that he had paid 2s. 3d. for kitchen stuff, which he had bought for his masters, and demanded to be paid for it. The clerk on this paid him 2s. 3d. out of the money which his master had furnished him with to pay for the kitchen stuff. The prisoner applied the money to his own use:—Held, that as the clerk had delivered the money to the prisoner with the intention of parting with it altogether, the prisoner was not liable to an indictment for stealing the money, but that he might have been indicted for obtaining by false pretences. *Reg. v. Burnes*, T. & M. 387; 2 Den. C. C. 59; 20 L. J., M. C. 34; 14 Jur. 1123.

It was the duty of a servant to ascertain daily the amount of dock dues payable by his master, and, having ascertained it, to apply to his master's cashier for the amount, and then to pay it in discharge of the dues. On one occasion, by representing falsely to the cashier that the amount was larger than it really was, as he well knew, he obtained from the cashier the sum he stated it to be, and then paid the real amount due, and appropriated the difference:—Held, that his offence was not larceny, but obtaining money by false pretences. *Reg. v. Thompson*, L. & C. 233; 9 Cox, C. C. 222; 32 L. J., M. C. 57; 8 Jur., N. S. 1162; 7 L. T. 393; 11 W. R. 41.

Obtaining Cheque.—By means of a false wages sheet the prisoner obtained from his master a cheque for the amount stated in the sheet to pay the men's wages. The cheque was informally drawn, and refused payment by the bank. The prisoner returned it to his master, telling him of the cause of its non-payment, and the master tore it up and gave another, which the prisoner cashed, and appropriated the difference between what was really due for wages and what was falsely stated to be due. On an indictment charging him with obtaining 8s. 6d., the actual sum appropriated by him, it was objected that the above evidence did not prove the charge, for that he had only obtained a valueless piece of paper:—Held, that the false pretence was a continuing one, and that the second valuable cheque was obtained thereby equally with the first, and that the charge was proved. *Reg. v. Greathead*, 38 L. T. 691.

Substitution by Prisoner of Proper Accounts for other Purposes.—An indictment alleged that the

prisoner obtained a coat by falsely pretending that a bill of parcels of a coat, value 14s. 6d., of which 4s. 6d. had been paid on account, and that 10s. only was due, was a bill of parcels of another coat of the value of 22s. The evidence was that the prisoner's wife had selected the 14s. 6d. coat for him, subject to its fitting him, and had paid 4s. 6d. on account, for which she received a bill of parcels giving credit for that amount. On trying on the coat it was found to be too small, and the prisoner was then measured for one to cost 22s. When that was made it was tried on by the prosecutor, who was not privy to the former part of the transaction. The prisoner when the coat was given to him handed the bill of parcels for the 14s. 6d. and 10s., saying, "There is 10s. to pay." The bill was receipted, and the prisoner took the 22s. coat away with him. The prosecutor stated that believing the bill of parcels to refer to the 22s. coat, he parted with that coat on payment of 10s., otherwise he should not have done so:—Held, that there was evidence to support a conviction. *Reg. v. Steels*, 11 Cox, C. C. 5; 17 L. T. 666; 16 W. R. 341.

11. BY MEANS OF CHEQUES, BILLS OF EXCHANGE AND PROMISSORY NOTES.

At Common Law.—A person who, under a mere false pretence of purchasing lottery tickets, bargains with the holder of them, and obtains the delivery of them by giving a draft on a banker, with whom he had no cash, for the amount of them, is not indictable for a fraud at common law; for, in order to constitute this offence, the property must be obtained either by conspiracy, or by means of a false token as well as a false pretence, and not, as in this case, by a mere false assertion, or a bare naked lie. *Re v. Lara*, 2 Leach, C. C. 652; 2 East, P. C. 819, 827; 6 T. R. 565.

Knowledge that Cheque, &c., will not be Paid.]

—Obtaining goods by means of a cheque which the party knows will not be paid, is an indictable offence. *Re v. Jackson*, 3 Camp. 370.

Prosecutor agreed to sell a mare, warranted sound, to the prisoner for 20l. 10s. The prisoner came and took the mare away on a Thursday, giving a cheque for the price, which, at his request, the prosecutor agreed not to cash till Saturday. He, however, paid the cheque to his bankers on the same Thursday; they returned it to him on the Saturday indorsed "no account." The prisoner had no effects at the bank on the Saturday, or on any day for a long time previously. For the prisoner, B., a witness, proved that he had requested prisoner to buy a horse for him (B.), and that prisoner had told B. that he thought he knew of a mare that would suit, and asked B. for a cheque, which B. did not give, as he had not his cheque-book with him; that the prisoner, on the Monday after the Saturday, told B. he had bought a horse for him for 20l. 10s., and that B. sent a cheque to him on the following day for the amount. On the Wednesday the mare was sent back to the prosecutor, with a veterinary certificate that she was not sound, a summons against the prisoner having been taken by the prosecutor and left at the prisoner's house on the previous Monday. The prisoner's counsel contended that the prisoner ought to be acquitted, first, because the prosecutor having broken the contract, the charge of false pretences could not

be maintained; secondly, because there was no false pretence of an existing fact, as the prisoner did not allege he had funds at the bank at the time he drew the cheque; and thirdly, because, upon B.'s evidence, the prisoner had reasonable cause to believe that the cheque would be paid on the Saturday. The court overruled the objections, and directed the jury that if they believed that the prisoner knew he had no funds at the bank at the time he gave the cheque, and that the prosecutor had parted with the mare upon the belief that the cheque was a good and valid one, they must find the prisoner guilty. The jury thereupon found the prisoner guilty:—Held, that the direction was wrong, and that the case ought not to have been left to them, and that the conviction ought to be quashed. *Reg. v. Walne*, 11 Cox, C. C. 647; 23 L. T. 748.

A man who makes and gives a cheque for the amount of goods purchased in a ready money transaction, saying that he wishes to pay ready money, makes a representation that the cheque is a good and valid order for the amount inserted in it; and if such person has only a colourable account at the bank on which the cheque is drawn, without available assets to meet it, and has no authority to overdraw, and knows that the cheque will be dishonoured on presentation, and intends to defraud, he may be convicted of obtaining such goods by such false pretences. *Reg. v. Hazelton*, 2 L. R., C. C. 134; 44 L. J., M. C. 11; 31 L. T. 451; 23 W. R. 139.

A. was charged with falsely pretending that a post-dated cheque, drawn by himself, was a good and genuine order for 25l., and of the value of 25l., by means of which he obtained a watch and a chain. It was found by the jury that, before the completion of the sale, and the delivery of the watch by the prosecutor to the prisoner, the prisoner represented to the prosecutor that he had an account with the bankers on whom the cheque was drawn, and that he had a right to draw the cheque, though he postponed the date for his own convenience, all which was false; and that he represented that the cheque would be paid on or after the day of the date, but that he had no reasonable ground to believe that it would be paid, or that he could provide funds to pay it. The prisoner was convicted, and the judges held the conviction right. *Re v. Parker*, 7 C. & P. 825; 2 M. C. C. 1.

Obtaining credit in account from the party's own banker, by drawing a bill of exchange on a person on whom the party has no right to draw, and which has no chance of being paid, is not a false pretence within 7 & 8 Geo. 4, c. 29, s. 53, though the banker pays money for him in consequence to an extent that he would not otherwise have done. *Re v. Wavell*, 1 M. C. C. 224.

Cheque Signed in Fictitious Name.]—R. M., in payment for a pony and cart, purchased by him from the prosecutor, drew a cheque in the name of W. M., in the presence of the prosecutor, upon a bank at which he, the prisoner, had no account, and gave it to the prosecutor as his own cheque, drawn in his own name. At the time he drew the cheque the prisoner knew that it would be, as in fact it was, dishonoured. The prosecutor received the cheque in the belief that it was drawn in the prisoner's own name:—Semble, that R. M. was guilty of obtaining the pony and cart by false pretences. *Reg. v. Martin*, 5 Q. B. D. 34; 49 L. J., M. C. 11; 41

L. T. 531; 28 W. R. 232; 44 J. P. 74; 14 Cox, C. C. 375.

Bill not Due till after time stated.]—Where a prisoner obtained goods on the faith of a false statement that a bill which he gave for the price of them would be paid on the following day, he may be convicted of obtaining goods under false pretences, though such bill on the face of it was not due till after that day. *Reg. v. Hughes*, 1 F. & F. 355.

Indictment—Form and Contents of.]—If an indictment for attempting to obtain money under false pretences, charges it to have been attempted by means of a paper writing purporting to be an order for money, and the instrument cannot be considered as stated in the indictment to be such an order, it is bad. *Reg. v. Cartwright*, R. & R. C. C. 106.

But an indictment that A. unlawfully did falsely pretend that a printed paper was a good and valid promissory note, is sufficient, without setting out the paper. *Reg. v. Coulson*, T. & M. 332; 1 Den. C. C. 592; 19 L. J., M. C. 182; 14 Jur. 557.

An indictment stated that the defendant falsely pretended to W. that he was a captain in the East India Company's service, and that a promissory note which he "then and there produced and delivered to W., purporting to be made for the payment of 21*l.*, not saying by whom it purported to be drawn, nor otherwise describing it, was a good and valuable security for 21*l.*; by which false pretences he obtained," &c.: whereas the defendant was not a captain in the company's service; and whereas the promissory note which he then and there produced, and delivered to W., "was not a good and valuable security for 21*l.*, or for any other sum:"—Held, that the indictment did not sufficiently describe the note, or shew how it was wanting in value; and that a conviction could not be supported on the representation as to the defendant's character, because the false pretences were so connected on the record, that one could not be separated from the other. *Reg. v. Wickham*, 2 P. & D. 333; 10 A. & E. 34.

12. INDUCING PERSONS BY FRAUD TO EXECUTE OR DESTROY VALUABLE SECURITIES.

By 24 & 25 Vict. c. 96, s. 90, *whosoever, with intent to defraud or injure any other person, shall by any false pretence fraudulently cause or induce any other person to execute, make, accept, indorse or destroy the whole or any part of any valuable security, or to write, impress or affix his name, or the name of any other person, or of any company, firm or co-partnership, or the seal of any body corporate, company or society, upon any paper or parchment, in order that the same may be afterwards made or converted into or used or dealt with as a valuable security, shall be guilty of a misdemeanour. (Previous enactment, 21 & 22 Vict. c. 47.)*

Executing Valuable Security.]—Inducing a person by a false pretence to accept a bill of exchange, was not an obtaining a valuable security by a false pretence within 7 & 8 Geo. 4, c. 29, s. 53. *Reg. v. Danger*, Dears. & B. C. C. 307; 7 Cox, C. C. 303; 26 L. J., M. C. 185; 3 Jur., N. S. 1011.

The prisoner was convicted upon an indictment, charging him with stealing a cheque. It was proved that he was clerk to a savings bank, and received the cheque from a manager of the bank, upon a false representation that one of the depositors had given notice of withdrawal, and for the purpose of handing it over to the depositor. It was found that, according to the usual course of business, if a depositor could not attend at a proper time to receive the cheque, it was handed to the prisoner, as the agent of the depositor:—Held, that the case was one of false pretence, and not larceny, and that the conviction was wrong. *Reg. v. Essex*, Dears. & B. C. C. 371; 7 Cox, C. C. 384; 27 L. J., M. C. 20; 4 Jur., N. S. 16.

If a person, by false pretences, obtains a cheque on a banker on unstamped paper, payable to D. F. J., and not payable to bearer, it is not an obtaining a valuable security by false pretences. *Reg. v. Yates*, Car. C. L. 333; 1 M. C. C. 170.

But obtaining, as a loan, from the drawer of a bill accepted by the prisoner and negotiated by the drawer, part of the amount, for the purpose of paying the bill, under the false pretence that the prisoner was prepared with the residue of the amount, is an offence within 7 & 8 Geo. 4, c. 29, s. 53, the prisoner being shewn not to be so prepared, and not intending so to apply the money. *Reg. v. Crossley*, 2 M. & Rob. 17; 2 Lewin, C. C. 164.

13. BY PASSING OFF FLASH OR WORTHLESS BANK NOTES.

Counterfeit Notes.]—The fact of uttering a counterfeit note as a genuine one is tantamount to a representation that it was so; and it is a false pretence, notwithstanding the note upon the face of it would have been good for nothing in point of law, even if true. *Reg. v. Freeth*, R. & R. C. C. 127.

Passing off a flash note as a Bank of England note on a person unable to read, and obtaining from him in exchange for it five pigs of the value of 3*l.* 17*s.* 6*d.*, and 1*l.* 2*s.* 6*d.* change, is a false pretence. *Reg. v. Coulson*, T. & M. 332; 1 Den. C. C. 592; 4 Cox, C. C. 227; 19 L. J., M. C. 182; 14 Jur. 557.

The defendant fraudulently offered a 1*l.* Irish bank note as a note for 5*l.*, and obtained change as for a 5*l.* note. The person from whom the change was obtained could read, and the note itself upon the face of it clearly afforded the means of detecting the fraud:—Held, that this was obtaining money by means of false pretences. *Reg. v. Jessop*, Dears. & B. C. C. 442; 7 Cox, C. C. 399; 27 L. J., M. C. 70; 4 Jur., N. S. 123.

Halves of Bank Notes.]—A person who obtains goods by sending by post half notes in payment, but sends the corresponding halves to another person in payment for other goods, is properly convicted of obtaining the first-mentioned goods under false pretences. *Reg. v. Murphy*, 10 Ir. R., C. L. 508; 13 Cox, C. C. 298.

Proof that Notes are Valueless.]—The prisoner, knowing that some old country bank notes had been taken by his uncle forty years before, and that the bank had stopped payment, gave them to a man to pass, telling him to say, if asked about them, that he had taken them from a man he did not know. The man passed the notes,

and the prisoner obtained value for them. It appeared that the bankers were made bankrupt:—Held, that he was guilty of obtaining money by false pretences, and that the bankruptcy proceedings need not be proved. *Reg. v. Doucy*, 11 Cox, C. C. 115; 37 L. J., M. C. 52; 17 L. T. 481; 16 W. R. 344.

On an indictment for obtaining money by falsely pretending that the promissory note of a bank that has stopped payment by reason of bankruptcy, was a good and valuable security for the payment of the amount mentioned in it, and was of that value, it is not necessary to prove the proceedings in bankruptcy. It is sufficient to prove the time when the bank stopped payment, and that cash could not be obtained for the note on its being presented for payment at the place where it was made payable. *Reg. v. Smith*, 6 Cox, C. C. 314.

On an indictment for delivering in payment for a horse certain promissory notes, as for good and available promissory notes, which the prisoner knew to be not good, nor of any value; the notes purported to be the notes of a country bank which was supposed to have failed:—Held, that at all events it was necessary to prove that the notes were bad and of no value. *Rea v. Flint*, R. & R. C. C. 460.

Evidence that Notes may be of some Value.]—Indictment for false pretences, in passing a note of a bank that had stopped payment as a good note. The prisoner knew that the bank had stopped payment; but it appeared that two only of the partners of the bank had become bankrupt, and that the third had not:—Held, that the prisoner must be acquitted. *Rea v. Spencer*, 3 C. & P. 420.

If a person pass a note of a country bank for 5*l.* payable on demand as a good note, and as of the value of 5*l.*, knowing that the bank is insolvent, and has stopped payment, and cannot pay the note in full, he may be indicted for obtaining money by false pretences. *Reg. v. Evans*, Bell, C. C. 187; 8 Cox, C. C. 257; 29 L. J., M. C. 20; 5 Jur., N. S. 1361; 1 L. T. 108.

But where the evidence shews that the bank has paid a dividend, the direction to the jury that there is evidence that the note is not of any value, will be wrong. *Id.*

Indictment—Form and Contents of.]—An indictment charging that the defendant unlawfully did pretend to S. that a paper writing which he produced to S. was a good 5*l.* Ledbury Bank note, by means whereof he unlawfully obtained money from S., with intent to cheat and defraud him of the same: whereas, in truth and in fact, the paper writing was not a good 5*l.* note of the Ledbury Bank,—is bad, as it does not charge that the defendant knew that it was not a good 5*l.* note of the Ledbury Bank, and is not aided by the allegation of the intent to defraud. *Reg. v. Philpotts*, 1 C. & K. 112.

The prisoner was convicted of attempting to obtain a sewing machine by false pretences. The indictment alleged that he did falsely pretend that a paper partly in print and partly in writing, produced by him to the prosecutor, and purporting to be a bank note for the payment to the bearer of 5*l.*, was then a good, genuine, and available order for the payment of 5*l.*, and was then of the value of 5*l.*; by means of which false pretence the prisoner did unlawfully at-

tempt to obtain a sewing machine. The evidence was that the prisoner bargained for the purchase of the sewing machine for 35*s.*, and said that a friend had told her to get one, and had sent her the money to pay for it, and at the same time gave a worthless bank note for 5*l.* payable to the bearer, of the Devonshire Bank, which had stopped payment many years before. The prisoner knew at the time that the bank had stopped payment, and that the note was of no value:—Held, that the indictment, though inartificially framed, sufficiently alleged that the prisoner falsely represented the note to be a good and genuine note of an existing bank, and of the value of 5*l.*, and that the evidence supported the conviction. *Reg. v. Jarman*, 14 Cox, C. C. 48; 38 L. T. 460.

14. CHEATS.

Under colour of Betting.]—If there is a plan to cheat a man of his property, under colour of a bet, and he parts with the possession only to deposit it as a stake with one of the confederates; the taking by such confederate is felonious. *Rea v. Robson*, R. & R. C. C. 413.

Ring-dropping.]—To obtain property from another by the practice of ring-dropping is felony, if the jury finds it was obtained under a preconceived design to steal it. *Rea v. Patch*, 1 Leach, C. C. 238; 2 East, P. C. 678; *S. P.*, *Rea v. Marsh*, 1 Leach, C. C. 345.

A person who induces another to deliver bank notes to him by the practice of ring-dropping, on the condition that if he does not restore them in such a time the entire value of the ring will belong to the person delivering the notes, is guilty of felony; for, although the possession of the notes is parted with, the property still remains in the owner. *Rea v. Watson*, 2 Leach, C. C. 640; 2 East, P. C. 680.

To aid and assist a person to the jurors unknown, to obtain money by the practice of ring-dropping, is felony, if the jury finds that the prisoner was confederating with the person unknown to obtain the money by means of this practice. *Rea v. Moore*, 1 Leach, C. C. 314; 2 East, P. C. 679.

Pretending to be Merchant.]—It is an indictable offence if two effect a cheat by means of one pretending to be a merchant and the other a broker, and as such bartering pretended wines for hats. *Rea v. Macarty*, 2 East, P. C. 823.

Picture with spurious Name attached.]—If a man in the course of his trade, openly carried on, puts a false mark or token upon a spurious article, so as to pass it off as a genuine one, and the article is sold and money obtained by means of the false mark or token, he is guilty of a cheat at common law. *Reg. v. Closs*, Dears. & B. C. C. 460; 7 Cox, C. C. 494; 27 L. J., M. C. 54; 3 Jur., N. S. 1309.

If a person knowingly sells as an original, a copy of a picture, with the painter's name imitated upon it, and by means of the imitated name, knowingly and fraudulently induces another to buy and pay for the picture as a genuine work of the artist, he may be indicted for a cheat at common law, by means of a false token; but he cannot be indicted for forging, or

uttering the forged name of the painter; for the crime of forgery must be committed with some document in writing, and does not extend to the fraudulent imitation of a name put on a picture merely as a mark to identify it as the painter's work. *Ib.*

Wagering by tossing with Coins.—The prisoners were indicted and convicted under the 8 & 9 Vict. c. 109, s. 17, of obtaining by fraud and unlawful device and ill-practice in playing at a certain game or sport, to wit, in and by wagering on the event of a certain game or sport, a watch and other things from the prosecutor. The evidence was that the prosecutor was induced to go to a public-house and drink and toss for wagers with one of the prisoners, and the event was that the prosecutor lost, and the prisoners took away the property stated:—Held, that this was a sport, pastime or exercise, if not a game, within the meaning of s. 17 of 8 & 9 Vict. c. 109. *Reg. v. O'Connor*, 15 Cox, C. C. 3; 45 L. T. 512; 46 J. P. 214.

Indictment.—An indictment for obtaining money by selling an article which was marked with a spurious mark or token must contain an averment that it was by means of such false mark or token that he was enabled to pass off the article and obtain the money. *Reg. v. Cross*, Dears. & B. C. C. 460; 7 Cox, C. C. 494; 27 L. J., M. C. 54; 3 Jur., N. S. 1309.

In an indictment under 8 & 9 Vict. c. 109, s. 17, for winning money at cards by fraud, unlawful device and ill practice, it is not necessary to state to whom the money belonged. *Reg. v. Moss*, Dears. & B. C. C. 104; 7 Cox, C. C. 200; 26 L. J., M. C. 9; 2 Jur., N. S. 1196.

15. AMOUNTING TO LARCENY.

Statute.—By 24 & 25 Vict. c. 96, s. 88, *if upon the trial of any person indicted for the misdemeanor of obtaining by any false pretence from any other person any chattel, money or valuable security, with intent to defraud, it shall be proved that he obtained the property in question in any such manner as to amount in law to larceny, he shall not by reason thereof be entitled to be acquitted of such misdemeanor and no person tried for such misdemeanor shall be liable to be afterwards prosecuted for larceny upon the same facts.*

False Pretences must be Proved.—To prevent a person indicted for false pretences from being acquitted on the ground that the offence is that of felony, the false pretences laid must be proved, for under the 24 & 25 Vict. c. 96, s. 88, he is to be found guilty of the misdemeanor. *Reg. v. Bulmer*, L. & C. 476; 9 Cox, C. C. 492; 33 L. J., M. C. 171; 10 Jur., N. S. 684; 10 L. T. 580.

16. INDICTMENT.

a. Parties Indictable.

Where the pretence is conveyed by words spoken by one defendant in the presence of others who are acting in concert together, they may be all indicted jointly. *Young v. Rex* (in error), 2 East, P. C. 82, 833; 1 Leach, C. C. 505; 3 T. R. 98.

b. Form and Contents of.

Form of Averments.—By 24 & 25 Vict. c. 96, s. 88, *it shall be sufficient in any indictment for obtaining or attempting to obtain any such property—(i.e., any chattel, money or valuable security, see s. 87 and s. 1)—by false pretences to allege that the party accused did the act with intent to defraud, without alleging an intent to defraud any particular person, and without alleging any ownership of the chattel, money, or valuable security; and on the trial of any such indictment it shall not be necessary to prove an intent to defraud any particular person, but it shall be sufficient to prove that the party accused did the act charged with an intent to defraud.* (Former provision, 14 & 15 Vict. c. 100, s. 8.)

By 14 & 15 Vict. c. 100, s. 5, *in an indictment for obtaining by false pretences any instrument, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known, or by the purport thereof, without setting out any copy or fac-simile thereof, or otherwise describing the same or the value thereof.*

False Pretence on one Person, Deceit on Another.—An indictment for a fraud at common law, charging the false pretence to have been made to one person, and the deceit to have been practised on a different person, is bad. *Rex v. Lara*, 2 Leach, C. C. 647; 2 East, P. C. 819, 824; 6 T. R. 565.

"Feloniouly" Pretend.—An indictment on a charge of obtaining goods under false pretences, is bad, if it states that the prisoner "unlawfully, knowingly, and designedly, did feloniously pretend," &c. *Rex v. Walker*, 6 C. & P. 657. See *Rex v. Howorth*, 3 Stark. 26.

Prisoner's Knowledge of Fraud not Alleged.]

—An indictment for obtaining money under false pretences must allege, that the defendant knew the falsehood; "falsely and fraudulently" is not enough. *Reg. v. Henderson*, 2 M. C. C. 192; Car. & M. 328.

In an indictment for obtaining money by false pretences under 7 & 8 Geo. 4, c. 29, it was alleged that the defendant "did unlawfully falsely pretend," &c.:—Held, that the omission of the word "knowingly" was no ground for arresting the judgment. *Reg. v. Bowen*, 4 New Sess. Cas. 62; 3 Cox, C. C. 483; 13 Q. B. 790; 19 L. J., M. C. 65; 13 Jur. 1045.

False Pretence must be Stated.—An indictment charging the defendant with obtaining money by false pretences, is insufficient, if it does not shew what the false pretences were. *Rex v. Mason*, 1 Leach, C. C. 487; 2 East, P. C. 837; 2 T. R. 581.

Sufficiency of False Pretence.—A first count charged that the defendant unlawfully did falsely pretend to J. L. that he, the defendant, was sent by W. P. for an order to go to J. B. for a pair of shoes, by means of which false pretence he did obtain from J. B. a pair of shoes, of the goods and chattels of J. B., with intent to defraud J. L. of the price of the said shoes, to wit nine shillings, of the moneys of J. L. The second count charged that he falsely pretended to J. L.

that W. P. had said that J. L. was to give him, the defendant, an order to go to J. B. for a pair of shoes, by means of which false pretence he did obtain from J. B., in the name of J. L., a pair of shoes of the goods of J. B., with intent to defraud J. L. of the same:—Held, that both of these counts were bad in arrest of judgment, as neither of them charged a sufficient false pretence. *Reg. v. Tully*, 9 C. & P. 227. Sed quære, see *Reg. v. Brown*, 2 Cox, C. C. 348.

An indictment stating that, by the rules of a benefit society, every free member was entitled to 5*l.* on the death of his wife; and that the defendant falsely pretended that a paper which he produced was genuine, and contained a true account of his wife's death and burial, and that he further falsely pretended that he was entitled to 5*l.* from the society, by virtue of their rules, in consequence of the death of his wife, by means of which last-mentioned false pretence he obtained money, is good. *Reg. v. Dent*, 1 C. & K. 249.

A false representation as to the value of a business will not sustain an indictment for obtaining money by false pretences. *Reg. v. Williamson*, 11 Cox, C. C. 328.

Several Inducements.]—A man was convicted on an indictment charging that he did falsely pretend that he then lived at, and was the landlord of, a beerhouse, and thereby obtained goods. The evidence was, that he said he was the nephew of a man in the prosecutor's employ, (which was true; and that he lived at the beerhouse; but he did not say he was the landlord of that house. The prosecutor, in parting with his goods, was influenced both by the fact of his being the nephew of his servant, and the statement that he lived at the beerhouse, and that therefrom he believed him to be the landlord of the beerhouse:—Held, that it was immaterial that the prosecutor was partly influenced by the fact that the prisoner was the nephew of his servant. *Reg. v. Linee*, 28 L. T. 570.

Held, also, that the allegation that he lived at and was the landlord of the beerhouse was divisible, and that the part, "that he lived at the beerhouse," being false, he was rightly convicted. *Id.*

Upon a charge of obtaining money by false pretences, it is sufficient if the actual substantial pretence, which is the main inducement to part with the money, is alleged in the indictment, and proved; although it may be shewn by evidence that other matters not laid in the indictment in some measure operated upon the mind of the prosecutor as an inducement to him to part with his money. *Reg. v. Hewgill*, Dears. C. C. 315; 2 C. L. R. 600; 18 Jur. 153.

An indictment stated that A. did unlawfully attempt and endeavour fraudulently, falsely, and unlawfully to obtain from the Agricultural Cattle Insurance Company, a large sum of money, to wit, 22*l.* 10*s.*, with intent to cheat and defraud the company:—Held, that the nature of the attempt was not sufficiently set forth. *Reg. v. Marsh*, 1 Den. C. C. 505; T. & M. 192, 3 New Sess. Cas. 699; 19 L. J., M. C. 12; 13 Jur. 1010.

Averment that Money Obtained by Pretence Alleged.]—An indictment for obtaining money under false pretences, negating the truth of certain alleged pretences, but not averring that

the prisoner obtained the money by means of those pretences, is bad, in arrest of judgment. *Reg. v. Kelleher*, 2 Ir. L. R. 11.

An indictment for obtaining money under false pretences, averring that the prisoner obtained the money by means of certain alleged pretences, but, instead of negating the truth of those pretences, negated the truth of other alleged pretences, is bad, in arrest of judgment. *Id.*

"With Intent to Defraud."]—If in an indictment for false pretences the words "with intent to defraud" are omitted, the indictment is bad, and cannot be amended under 14 & 15 Vict. c. 100, s. 1. *Reg. v. James*, 12 Cox, C. C. 127.

Part of Money only Obtained.]—A., the servant of B., rendered an account to B. of 14*l.* 1*s.* 2*d.* as due from A. to his workmen, and B. gave A. a cheque for the amount. All that sum was so due except 7*s.*, which A. kept when he got the cheque cashed, and paid the workmen the residue. In one count of an indictment for false pretences it was charged that, by this false pretence, A. obtained the cheque of B. with intent to defraud him of the same. It was objected that the intent was only to defraud B. of a part of the proceeds of the cheque. A. was convicted; and the judges held the conviction right, and that the evidence supported the count. *Reg. v. Leonard*, 3 Cox, C. C. 284; 1 Den. C. C. 304; 2 C. & K. 514.

Existing Fact.]—An indictment alleging that the defendant falsely pretended a sum of money, parcel of a certain larger sum, was due and owing to him for work which he had executed for the prosecutors, is not an allegation of a false pretence of an existing fact, as the allegation might be satisfied by evidence of a mere matter of opinion, either as regarded fact or law; and therefore the indictment is bad. *Reg. v. Oates*, Dears. C. C. 459; 6 Cox, C. C. 540; 24 L. J., M. C. 123; 1 Jur., N. S. 429.

An indictment for obtaining goods by false pretences must state the false pretences with certainty, so that it may clearly appear that there was a false pretence of an existing fact. *Reg. v. Henshaw*, L. & C. 444; 9 Cox, C. C. 472; 33 L. J., M. C. 132; 10 Jur., N. S. 595; 10 L. T. 428; 12 W. R. 751.

In an indictment alleging that the prisoner pretended to A.'s representative that she was to give him 20*s.* for B., and that A. was going to allow B. 16*s.* per week, it does not sufficiently appear that there was any false pretence of an existing fact. *Id.*

An indictment charged A. with falsely pretending to B., whose mare and gelding had strayed, that A. would tell B. where they were, if B. would give him a sovereign down. B. gave the sovereign, but A. refused to tell B. where they were:—Held, that the conviction must be quashed. The indictment should have stated that A. pretended to know where they were. *Rees v. Douglas*, 1 M. C. C. 462.

An indictment charged one Gregory with having obtained 30*l.* from prosecutor, Woodman, on the false pretence that he, the said Gregory, then wanted the loan of 30*l.* to enable him to take a public-house at Melksham; by means of which said false pretences the said Gregory did then unlawfully and fraudulently obtain the

said sum from the said Samuel Woodman with intent to defraud. Whereas the said Gregory was not then going to take a public-house at Melksham . . . as he the said Gregory well knew. And whereas the said Gregory did not then want a loan of 30*l.* or any money to enable him to take the said house :—Held, not sustainable. *Reg. v. Woodman*, 14 Cox, C. C. 179.

In an indictment, the pretence averred in some of the counts was that the prisoner falsely pretended that he having executed work, there was a sum of money due and owing to him for and on account of the work, being parcel of a larger sum claimed by him, whereas there was not then due and owing to him such money, being parcel of a larger sum. The false pretence averred in other counts was that the prisoner falsely pretended that there was due and owing to him the whole amount of a sum of money for and on account of work executed by him, whereas there was not then due and owing to him the whole amount of such sum of money, but only a smaller sum :—Held, that the indictment was bad, inasmuch as a false pretence of an existing fact was not sufficiently alleged, and the averments would be proved by evidence of a mere wrongful overcharge. *Reg. v. Oates*, Dears. C. C. 459 ; 3 C. L. R. 661 ; 24 L. J., M. C. 123 ; 1 Jur., N. S. 429.

Allegation of Ownership of Property.—An indictment for obtaining goods by means of false pretences, with intent to defraud a specified person, was bad, unless it stated whose property the goods were, and the defect was not aided after verdict, under 7 Geo. 4, c. 64, s. 21. *Reg. v. Martin*, 3 N. & P. 472 ; 8 A. & E. 481 ; 1 W. W. & H. 380 ; 2 Jur. 515 ; *S. P.*, *Reg. v. Norton*, 8 C. & P. 196. See 24 & 25 Vict. c. 96, s. 88, *supra*, which renders an allegation of ownership unnecessary.

By 14 & 15 Vict. c. 100, s. 8, it shall be sufficient, in an indictment for obtaining property by false pretences, to allege that the defendant did the act with intent to defraud, without alleging the intent of the defendant to be to defraud any particular person. By s. 25, every objection to an indictment for any formal defect apparent on the face thereof shall be taken before the jury shall be sworn :—Held, that s. 8 did not render it unnecessary, in an indictment for obtaining money by false pretences, to state whose property the money was, and that the omission was not a formal defect within s. 25. *Sill v. Reg. (in error)*, Dears. C. C. 132 ; 1 E. & B. 553 ; 22 L. J., M. C. 41 ; 17 Jur. 207.

An indictment for false pretences, alleging that the prisoner obtained "from A. a cheque for the sum of 8*l.* 14*s.* 6*d.* of the moneys of B.," is a sufficient allegation that the cheque was the property of B. *Reg. v. Godfrey*, Dears. & B. C. C. 426 ; 7 Cox, C. C. 392 ; 27 L. J., M. C. 151 ; 4 Jur., N. S. 146.

In an indictment framed upon 8 & 9 Vict. c. 109, s. 17, charging that the prisoner, by fraud in playing at cards, did win from A. to B. a sum of money with intent to cheat A., it is not necessary to allege that the money won was the property of A. *Reg. v. Moss*, Dears. & B. C. C. 104 ; 26 L. J., M. C. 9 ; 2 Jur., N. S. 1196.

But an indictment for a conspiracy to obtain goods by false pretences, not stating whose property the goods were which it was the object of

the conspiracy to obtain, is bad, in arrest of judgment. *Reg. v. Parker*, 2 G. & D. 709 ; 3 Q. B. 292.

An indictment, charging (in substance) "that N. W. and others did conspire by false pretences to defraud of large sums of money all such persons as should apply to or negotiate with them for a loan of money," was, on a writ of error, held bad for vagueness and uncertainty. *White v. Reg. (in error)*, 10 Ir. C. L. 523 ; 13 Cox, C. C. 318.

Effect of Vexatious Indictments Act.—B. was summoned before justices for aiding and abetting S. to obtain money by false pretences, and both were committed to take their trial, S. on the charge of attempting to obtain money by false pretences, and B. on the charge of aiding and abetting S. to commit that offence. At the sessions an indictment against S. and B. for jointly attempting to obtain money by false pretences was preferred, without the leave required by the Vexatious Indictments Act (22 & 23 Vict. c. 17), and found by the grand jury, upon which they were tried jointly, and S. acquitted and B. found guilty. At the trial the objection was taken and overruled, that the indictment having been preferred against B. for an offence upon which he had not been committed for trial, the indictment should be quashed :—Held, that the Vexatious Indictments Act, s. 1, was inapplicable, as that applied only to the offence of "obtaining money or other property by false pretences," and not to the offence of "attempting to obtain money or other property by false pretences." *Reg. v. Burton*, 32 L. T. 539.

False Cheque.—Precedents of counts in an indictment for presenting a false cheque and obtaining money thereon. 11 Cox, C. C. App. xi.

Weight of Goods.—An indictment alleging that the prisoners falsely pretended to A. that some soot which they then delivered to A. weighed one ton and seventeen cwt., whereas it did not weigh one ton seventeen cwt., but only weighed one ton and thirteen cwt., they well knowing the pretence to be false, by means of which false pretence they obtained from A. 8*s.* with intent to defraud, is good and sufficiently describes an indictable false pretence. *Reg. v. Lee*, L. & C. 418 ; 9 Cox, C. C. 460 ; 32 L. J., M. C. 129 ; 10 L. T. 348 ; 12 W. R. 750.

Aider by Verdict.—An indictment charging that the defendant, contriving and intending to cheat W., on a day named, did falsely pretend to him that he, the defendant, then was a captain in her Majesty's fifth regiment of dragoons ; by means of which false pretence he did obtain of W. a valuable security, to wit, an order for the payment of 500*l.*, of the value of 500*l.*, the property of W., with intent to cheat W. of the same ; whereas, in truth, he was not, at the time of making such false pretence, a captain in her Majesty's regiment ; and the defendant at the time of making such false pretence, well knew that he was not a captain,—is a good indictment after conviction and judgment ; for it was not necessary to allege more precisely that the defendant made the particular pretence with the intent of obtaining the security ; nor how the particular pretence was calculated to effect, or had effected, the

obtaining: and the truth of the pretence was well negated, it appearing sufficiently that the pretence was, that the defendant was a captain at the time of his making such pretence, which was the fact denied: and it was unnecessary to aver expressly that the security was unsatisfied, at any rate since 7 Geo. 4, c. 64, s. 21, the objection being taken after verdict, and the indictment following the words of the statute creating the offence, *Hamilton v. Reg. (in error)*, 9 Q. B. 271; 2 Cox, C. C. 11; 16 L. J., M. C. 9; 10 Jur. 1028.

An indictment under 24 & 25 Vict. c. 96, s. 95, for "unlawfully receiving goods which have been unlawfully and knowingly, and fraudulently obtained by false pretences with intent to defraud, well knowing that the goods had been obtained by false pretences with intent to defraud as in this count before mentioned," omitted to set out what the particular false pretences were:—Held, that the objection, not having been taken before plea, was cured by the verdict of guilty. *Reg. v. Goldsmith*, 2 L. R., C. C. 74; 42 L. J., M. C. 94; 28 L. T. 881; 21 W. R. 791.

Indictments under Particular Circumstances.]

—See previous sub-divisions of this head.

17. EVIDENCE.

Who Admissible as a Witness.—B. was charged in a first count with obtaining money from the trustees of a savings bank by falsely pretending that a document presented to the bank by the wife of D. had been filled up by the authority of D.; and in a second count, he was charged with conspiring with the wife of D. to cheat the bank. The evidence of D. was received, in proof of the first count, to shew that he had given no authority to fill up the document or to withdraw the deposit. The jury found him guilty on the first count, and not guilty on the second count:—Held, first, that the evidence of D. was properly received in proof of the first count, his wife not being indicted, although she was alleged to be one of the parties to the conspiracy charged in the second count. *Reg. v. Halliday*, Bell, C. C. 257; 8 Cox, C. C. 298; 29 L. J., M. C. 148; 6 Jur., N. S. 514; 2 L. T. 254; 8 W. R. 423.

Held, secondly, that finding him guilty on the first count was consistent with finding him not guilty on the second count. *Id.*

Two were jointly indicted for obtaining money by conspiracy and by false pretences. On being arraigned, one pleaded guilty, and the other not guilty. On the trial of the indictment, the one who had pleaded guilty was admitted as a witness against the other, although it was objected that the evidence of a co-conspirator could not be received under the count for conspiracy. The jury found him not guilty on the count for conspiracy, but guilty on the counts for false pretences:—Held, that the co-conspirator was admissible as a witness, and that the conviction was right. *Reg. v. Gallagher*, 32 L. T. 406.

Alleged False Pretence must be Proved.]

On a trial of an indictment which charged the prisoner with obtaining a horse of the prosecutor by falsely representing himself to be the servant of Hardman, of Stickley Farm, the evidence was that the prisoner at first represented himself as a

servant of Hardman, of Stickley Farm, but that afterwards, learning that the prosecutor had mistakenly supposed that he had said he was the servant of Harding, late of Benwell Lodge, he adopted that view, and virtually said that he was the servant of Harding, late of Benwell Lodge, and now of Stickley Farm. It was proved that the prosecutor parted with his horse in the belief that the prisoner was the servant of Harding:—Held, that the conviction could not be supported, as the real pretence that operated on the prosecutor's mind was not alleged in the indictment. *Reg. v. Bulmer*, L. & C. 476; 9 Cox, C. C. 492; 33 L. J., M. C. 171; 10 Jur., N. S. 684; 10 L. T. 580; 12 W. R. 887.

From whom Money obtained.]—A prisoner was indicted for obtaining money from A. by false pretences. A's wife, by her husband's direction, delivered the money to the prisoner in the absence of her husband:—Held, that the money was obtained from A. *Reg. v. Moseley*, L. & C. 92; 9 Cox, C. C. 16; 31 L. J., M. C. 24; 7 Jur., N. S. 1108; 5 L. T. 328; 10 W. R. 61.

The money of a benefit society, whose rules were not enrolled, was kept in a box, of which E., one of the stewards, and two others had keys. The prisoner, on the false pretence that his wife was dead, which pretence he made to the clerk of the society in the hearing of E., obtained from the hands of E. out of the box 5*l.*:—Held, that, in an indictment, the pretence might be laid as made to E., and the money, the property of "E. and others," obtained from E. *Reg. v. Dent*, 1 C. & K. 249.

Goods obtained from B. "and Others"—Evidence only as to B.]—A. was charged with an attempt, by false pretences made to "John Baggally and others," fraudulently to obtain goods the property of the same parties. The evidence was, that the representation was made to John Baggally alone:—Held, that there was no variance, as the words "and others" might be rejected as surplusage. *Reg. v. Kealey*, T. & M. 405; 2 Den. C. C. 69; 5 Cox, C. C. 193; 20 L. J., M. C. 57; 15 Jur. 230.

Delivery of Goods, whether Connected with Pretence.]—A conviction for obtaining a chattel by false pretences is good, although the chattel is not in existence at the time the pretence is made, provided the subsequent delivery of the chattel is directly connected with the false pretence. Whether or not there is such a direct connexion is a question for a jury. *Reg. v. Martin*, 1 L. R., C. C. 56; 36 L. J., M. C. 20; 15 L. T. 54; 15 W. R. 358; 10 Cox, C. C. 383.

The prisoner, by falsely pretending to G. that he was agent to a steam laundry company, of which some of the leading men in B. were at the head, and that he was desired by the company (which, he subsequently admitted, was only himself) to procure a van, induced G. to make the van; but before it was sent to the laundry premises, countermanded it. G. nevertheless delivered the van, which the prisoner returned to G., telling him that he ought not to have sent it after the countermand. G. said he should not know what to do with it, and that the prisoner must keep it, upon which he replied that, if he did, G. must put in some boards for the baskets of linen; to which G. assented, and

the prisoner then drove away with the van. Upon indictment for obtaining the van by false pretences:—Held, that there was evidence to go to the jury. *Tb.*

Upon an indictment for obtaining money by false pretences, where it appears that statements were made on different occasions, it is a question for the jury whether they are so connected as to form one continuing representation. *Reg. v. Welman*, Dears. C. C. 188; 6 Cox, C. C. 153; 22 L. J., M. C. 118; 17 Jur. 421.

Sufficiency to prove False Pretence.—A postman falsely pretended that the sum of 2s. was payable on a post letter intrusted to him for delivery, whereas 1s. only was payable:—Held, that the offence was complete when he made the pretence, and therefore the absence of any evidence to shew positively that he did not pay over the extra 1s. to the superior officer was quite immaterial to his guilt or innocence. *Reg. v. Byrne*, 10 Cox, C. C. 369.

An indictment alleged that the prisoner obtained goods by falsely pretending that a person who lived in a large house down the street, and had had a daughter married some time back, had asked him to procure the goods. The prisoner made the statement alleged to a shopkeeper in a village, and thereby obtained the goods; but the only evidence to disprove the truth of the statement was that of a lady who lived in the village, whose daughter had been married a year previously, who stated that she had not sent the prisoner to the prosecutor's shop for the goods. The jury having found him guilty:—Held, that the conviction might be sustained. *Reg. v. Burnside*, Bell, C. C. 282; 8 Cox, C. C. 370; 30 L. J., M. C. 42; 6 Jur., N. S. 1310; 3 L. T. 311; 9 W. R. 37.

On an indictment for obtaining money by false pretences, if it is consistent with the evidence for the prosecution that the object of the false pretence was something else than the obtaining of the money, the charge will not be sustainable. *Reg. v. Stone*, 1 F. & F. 311.

Whole of alleged Pretence need not be Proved.]

—It is not necessary to prove the whole of the pretence charged; proof of part of the pretence, and that the money was obtained by such part, is sufficient. *Rea v. Hill*, R. & R. C. C. 190.

Admissibility of other Cases to shew Intent.]

—C. was indicted in four counts for obtaining money by false pretences from four persons named, the false statements alleged being the same in all these counts; in a fifth count for inserting, with intent to defraud the Queen's subjects, an advertisement in a newspaper containing the false statements mentioned in the previous counts and obtaining money thereby. It was shewn at the trial that he had inserted in a newspaper an advertisement containing statements found to be false, offering permanent employment in the preparation of carte-de-visite papers, and adding, "Trial paper and instructions, 1s.," and giving an address. Six envelopes were found in his possession on his being apprehended, each directed to the address given, and containing an answer to the advertisement, and twelve postage-stamps. Two hundred and eighty-one other letters were produced by a post-office clerk. These letters had been ad-

ressed to C. under the address given in the advertisement, and had been received at the post-office like the other letters; but having been stopped by the post-office authorities, none of them had ever been in his possession or custody; nor was any proof adduced that they were written by the persons from whom they purported to come. Each letter had been opened at the post-office before production at the trial, and each contained twelve stamps. The two hundred and eighty-one letters were admitted:—Held, that, under the circumstances, the letters were rightly received in evidence. *Reg. v. Cooper*, 1 Q. B. D. 19; 45 L. J., M. C. 15; 33 L. T. 754; 24 W. R. 279; 13 Cox, C. C. 123.

On the trial of an indictment for endeavouring to obtain an advance from a pawnbroker upon a ring by the false pretence that it was a diamond ring, evidence was admitted that two days before the transaction in question the prisoner had obtained an advance from a pawnbroker upon a chain which he represented to be a gold chain, but which was not so, and had endeavoured to obtain from other pawnbrokers advances upon a ring which he represented to be a diamond ring, but which, in the opinion of the witnesses, was not so. The ring was not produced:—Held, that the evidence was properly admitted. *Reg. v. Francis*, 2 L. R., C. C. 128; 43 L. J., M. C. 97; 30 L. T. 503; 22 W. R. 663; 12 Cox, C. C. 612.

A. was indicted for obtaining a specific sum of money from B. by false pretences. He was employed by his master to take orders, but not to receive moneys, and he was proved to have obtained the specific sum from B. by representing that he was authorized by his master to receive it. Evidence of his having, within a week afterwards, obtained another sum from another person by a similar false pretence, such obtaining not being mentioned in the indictment in any way, is not admissible for the purpose of proving the intent when he committed the acts charged in the indictment. *Reg. v. Holt*, 8 Cox, C. C. 411; Bell, C. C. 280; 30 L. J., M. C. 11; 6 Jur., N. S. 1121; 3 L. T. 310; 9 W. R. 74.

S. and H. were jointly indicted for false pretences, and for a conspiracy. S. was convicted for false pretences, and both for conspiracy. The evidence was, that they were ostensibly carrying on business as publishers under the name of B. & Co., and that H. was the author of a book published by them. To force the sale of the book, S. got M. to write letters purporting to come from a titled lady ordering a copy of the book, and to address them to country booksellers. These letters were delivered by M. to S., and found their way by post to different country booksellers, and inclosed with them was a printed circular from the firm, offering reduced terms for an order of seven copies or more. At the trial two witnesses produced a number of such letters, some of which had been given to them by the booksellers (other than those named in the indictment) who received them, and some came to them from such booksellers by post. There were no counts in the indictment alleging any intent to defraud these particular booksellers. It was also proved that H., after the frauds charged, had represented himself as B. & Co.:—Held, that the letters were admissible without calling the booksellers who actually received them. *Reg. v. Stenson*, 12 Cox, C. C. 111; 23 L. T. 666.

— **Representations made after Fraud committed.**—Held, also, that the representations of H., after the frauds charged, were admissible. *Ib.*

— **Letter Written by Prisoner's Solicitor.**—A letter written by a solicitor for a client making a claim for a lost parcel alleged to contain valuable articles, is not inadmissible on the ground of privilege in a criminal case. But in order to make a client criminally responsible for a letter written by his solicitor it must be shewn that the letter was written in pursuance of the instructions of the client. A letter by a solicitor written "in consequence" of an interview with his client is not equivalent to a letter written by the instructions of the client, and is not admissible in a criminal case against the client. *Reg. v. Downer*, 14 Cox, C. C. 486; 43 L. T. 445; 45 J. P. 52.

Letter Lost—Parol Evidence of Contents.—When a false pretence is contained in a letter which is lost, the prisoner may be convicted, if parol evidence is given of the contents of the letter. *Reg. v. Chadwick*, 6 C. & P. 181.

Deed put in—Parol Evidence of Representations not Excluded.—A. was indicted for obtaining 200*l.* by falsely pretending that he had obtained from Lord S. the appointment of emigration agent, which was worth 600*l.* a year, and that for 200*l.* he would give the prosecutor one-third of the agency. The prosecutor proved, that he gave the money on this pretence, which was false; but that, before he parted with his money, the prisoner prevailed on him to execute a deed of copartnership with him, in which the consideration was stated to be 200*l.*, and in which nothing was said of the agency, or how it was obtained:—Held, that the putting in of this deed on the part of the prosecution did not exclude the parol evidence of the false pretences; and that, if the deed was a part of the scheme to effect the fraud, the prisoner should be found guilty. *Reg. v. Adamson*, 1 C. & K. 192; 2 M. C. C. 286.

Letters—Duty of Prosecuting Counsel to have them Read.—On an indictment for obtaining money by a false pretence that a parcel contained all letters written by the prosecutrix to the prisoner, and which he had promised, in consideration of the money, to give up, the counsel for the prosecution is not bound to have the letters read, although the counsel for the prisoner may cross-examine as to the contents of any of them, and have any read for that purpose. *Reg. v. Colucci*, 3 F. & F. 104.

Infancy of Prisoner—How Proved.—On an indictment against a defendant for obtaining goods by falsely pretending that he was of full age, a plea of infancy in an action brought against him is not admissible for the purpose of proving that he was a minor. *Reg. v. Simmonds*, 4 Cox, C. C. 277.

18. VENUE.

Posting Letter.—A false pretence was made by letter in Nottingham, England, and posted there to and received by a person in France. In consequence of the letter that person drew a

cheque in France payable at Nottingham, and sent it to the prisoner at Nottingham, who cashed the cheque in England:—Held, that the prisoner was properly indicted and tried at Nottingham. *Reg. v. Holmes*, 12 Q. B. D. 23; 53 L. J., M. C. 37; 49 L. T. 540.

Where a prisoner, in a begging letter which contained false pretences, and was addressed to the prosecutor, who resided in Middlesex, requesting him to put a letter, containing a post-office order for money, in a post-office in Middlesex, to be forwarded to the prisoner's address in Kent:—Held, that the venue was rightly laid in Middlesex, as the prisoner, by directing the money order to be sent by post, constituted the postmaster in Middlesex his agent to receive it there for him; and that, consequently, there was a receipt of the money order by the prisoner within the county of Middlesex. *Reg. v. Jones*, 1 Den. C. C. 551; 4 New Sess. Cas. 353; 4 Cox, C. C. 198; 19 L. J., M. C. 162; 14 Jur. 533.

The prisoner wrote and posted in a county a letter containing a false pretence to the prosecutor, who received it in a borough. The prosecutor in the borough posted to the prisoner in the county a letter containing the money obtained by the false pretence, and which the prisoner received in the county:—Held, that under 7 Geo. 4, c. 64, s. 12, which authorizes the trial in any jurisdiction where the offence is begun or completed, the prisoner might be tried for the offence of obtaining the money by false pretence, at the borough quarter sessions; part of the offence being the making the false pretence, and the false pretence being made to the prosecutor in the borough, where the letter containing the false pretence was delivered to him by the post-office authorities, whom the prisoner made his agents for that purpose. *Reg. v. Leech*, Dears. C. C. 642; 7 Cox, C. C. 100; 25 L. J., M. C. 77; 2 Jur., N. S. 428.

On an indictment for obtaining money by a false pretence which was alleged to have been by sending a certain false return of fees to the Commissioners of the Treasury, it appearing that the return was received by them in Westminster, with a letter dated Northampton, and an affidavit sworn there; and that they, on the faith of it, drew up a minute, which operated as an authority to the paymaster-general to pay a certain amount to the prisoner (as compensation under 7 & 8 Vict. c. 96) at Westminster, the venue laid being Northamptonshire:—Held, that there was reasonable evidence that the false representation was forwarded from Northampton; that it was, if false and fraudulent, a false pretence within the statute; that in effect the money was obtained by means of the minute, being a mere matter of regulation, and not a judicial proceeding; and that, therefore, the venue was right, and the indictment was supported. *Reg. v. Cooke*, 1 F. & F. 64.

Other Cases.—One who obtains goods by false pretences in one county, and afterwards brings them into another county, where he is apprehended with them, cannot be indicted for the offence in the county, but must be indicted in the county where the goods were obtained. *Reg. v. Stanbury*, 9 Cox, C. C. 94; L. & C. 128; 31 L. J., M. C. 88; 8 Jur., N. S. 84; 5 L. T. 686; 10 W. L. 236.

Where a misdemeanor consists of different parts, so much of the charge as amounts to a

misdemeanor in law must be proved in the county in which the venue is laid. *Rev v. Buttery*, 3 B. & C. 700; 5 D. & R. 616.

19. RECEIVING PROPERTY OBTAINED BY FALSE PRETENCES.

Receiver—When Guilty.—On the trial of an indictment for receiving goods, knowing them to have been obtained by false pretences, if the jury is not satisfied that the prisoner knew that the goods were obtained by false pretences, the receiver is entitled to be acquitted. *Reg. v. Rymes*, 3 C. & K. 327.

20. EFFECT OF FALSE PRETENCES ON CONTRACTS.

Of Conviction.—By 24 & 25 Vict. c. 96, s. 110, if any person guilty (inter alia) of obtaining any chattel, money, or other property by false pretences "shall be indicted on behalf of the owner of the property and convicted, in such case the property shall be restored to the owner."—W. purchased and obtained delivery of certain sheep from the defendant by false pretences. The plaintiff purchased the sheep from W. and paid W. for them without knowledge of the fraud, the defendant having done nothing in the meantime to avoid the contract between himself and W. The defendant finding that the sheep were on the plaintiff's premises retook possession of them; W. having been convicted of obtaining the sheep by false pretences on the prosecution of the defendant:—Held, that the effect of 24 & 25 Vict. c. 96, s. 100, was not to retest the property in the sheep in the defendant as against the plaintiff, who had acquired a good title to them before the conviction, and consequently that the defendant was liable in an action by the plaintiff for the value of the sheep. *Moyce v. Newington*, 4 Q. B. D. 32; 48 L. J., Q. B. 125; 39 L. T. 535; 27 W. R. 319. See also *Cundy v. Lindsay*, 1 Q. B. D. 348; 45 L. J., Q. B. 381; 34 L. T. 314; 24 W. R. 730; and 2 Q. B. D. 96; 46 L. J., Q. B. 233; 36 L. T. 345; 25 W. R. 417.—C. A. *But this point was not raised in S. C.*, 3 App. Cas. 459; 47 L. J., Q. B. 481; 38 L. T. 573; 26 W. R. 406.

XVII. FELONY AND FELONS.

1. *Rights of the Crown.*
2. *Validity of Assignments by Felons*, 213.
3. *Effect of Pardon*, 214.
4. *Other Points relating to*, 215.
5. *Compounding Felonies and Informations*, 217.

1. RIGHTS OF THE CROWN.

Forfeiture.—33 & 34 Vict. c. 23, *abolishes forfeiture of lands and goods for treason and felony, and provides for the administration of the estates of convicts.*

Before this Enactment.—Where the legatee of a promissory note bequeathed by will is convicted of felony, the forfeiture caused by such conviction does not divest the executor of his right to sue the maker, though he is a trustee for

the crown in respect of the proceeds of the suit. *Bishop v. Curtis*, 18 Q. B. 878; 21 L. J., Q. B. 391; 17 Jur. 23.

A testator devised real estate to his widow for life, and at her death to trustees, to sell and pay part of the proceeds to B., who committed a felony, but had undergone his punishment before the widow's death:—Held, that his interest was not forfeited to the crown. *Thompson, In re*, 22 Beav. 506.

The testator also directed his trustees to provide a fund out of his personality and other real estate, to secure an annuity for his widow. The fund was provided:—Held, that B.'s interest, being vested, became forfeited to the crown by his conviction for felony in the widow's life, though he had undergone his punishment previously to her death. *Id.*

A stock legacy, and a share of residuary personality expectant on the death of a tenant for life, bequeathed to a minor, payable at twenty-one, with a limitation over in the event of his death under twenty-one, are interests which, prior to the 4th July, 1870, were forfeitable to the crown on the conviction of the minor for felony. *Bateman, In re*, 15 L. R., Eq. 355; 42 L. J., Ch. 553; 28 L. T. 395; 21 W. R. 435.

On a petition by the attorney-general for payment to the crown of personal property of a felon:—Held, that a conviction in New South Wales was sufficient to support the petition. *Id.*

A father bequeathed to his son S., "the interest of 2,000*l.* to be paid him by my executor yearly so long as he lives, and then the principal to be divided amongst my real sons and daughters that are living except my son that has the interest paid him." The will contained no residuary gift. The father left S., and eight other children, who all predeceased S. One of the eight children was convicted of felony during the life of S., and died in prison. His interest under the will having been claimed by the crown:—Held, that the claim could not be sustained. *Davis, In re*, 27 L. T. 477.

A. died intestate, the wife of a felon under sentence of transportation, and leaving property acquired after the conviction of her husband:—Held, that such property belonged to the crown as accrued to the felon, and not to the next of kin of the wife. *Coombes v. Queen's Proctor*, 2 Rob. Eec. Rep. 547; 16 Jur. 820.

A right of action for damages is not forfeited to the crown upon a conviction for felony. *Fleming v. Smith*, 12 Ir. C. L. R. 404.

But a right of action, in respect of money had and received, money paid, and upon an account stated, is forfeited. *Id.*

Plea to the money counts, that the plaintiff had been convicted of felony, and sentenced to six years' penal servitude; and that the causes of action accrued after the plaintiff was convicted, and before he had endured the punishment to which he was adjudged; and that by reason of the conviction, the moneys and rights of action for recovery thereof, became forfeited to the crown, and had not since been restored. Replication, that the felony was not punishable with death, and that before action, and after sentence, the sentence and punishment had been commuted, and that the plaintiff had endured the full term of the commuted punishment, is no answer. *Id.*

A settlement contained a provision, that if any

of the children who were the objects of the settlor's bounty should, previously to the assignment to him of the trust property, have alienated his expectant share, then his share should be forfeited and belong to the others. One of the children, before the assignment to him, and before his share vested, committed a felony, and then executed a deed purporting to be an assignment of his share:—Held, that this operated as a forfeiture to such of the others as were entitled to take under the settlement, and was valid against the crown. *Blake v. Barnett*, 2 Drew. & Sm. 117; 31 L. J., Ch. 898; 8 Jur., N. S. 812; 6 L. T. 886; 10 W. R. 767.

Freeholds of inheritance which, at the time of his death, belong to a man who dies *felo de se*, do not escheat to the crown, but pass to his heir-at-law. *Norris v. Chambres*, 29 Beav. 246; 30 L. J., Ch. 285; 7 Jur., N. S. 59. Affirmed on appeal, 7 Jur., N. S. 689; 4 L. T. 345; 9 W. R. 794.

Land belonging to several persons was taken under a local act, and the purchase-money paid into court. One of the owners was afterwards convicted of felony, and sentenced to transportation for seven years, after the expiration of which he claimed his share of the purchase-money:—Held, that the money retained its character of realty, and was not forfeited to the crown. *Harrop, In re*, 3 Drew. 726; 26 L. J., Ch. 516; 3 Jur., N. S. 380.

2. VALIDITY OF ASSIGNMENTS BY FELONS.

After the commission of a felony, and before his conviction, a felon may sell or assign over his personal property for valuable consideration; and a debt existing at the time of the commission of the offence is a sufficient consideration to support such an assignment. But the sale must be *bonâ fide*, and not colourable and merely for the purpose of avoiding the forfeiture on conviction. *Chowne v. Baylis*, 31 Beav. 351; 31 L. J., Ch. 757; 8 Jur., N. S. 1028; 6 L. T. 739; 11 W. R. 5.

The assignment by a felon of his goods and chattels after the offence committed, and before conviction, depends for its validity, as against the claim of the crown, upon valuable consideration and the *bona fides* of the transaction. *Perkins v. Bradley*, 1 Hare, 219; 6 Jur. 254.

A voluntary settlement of personal estate, executed in favour of a wife and children, after the commission of a felony, but before and in fear of conviction, is invalid against the crown. *Saunders, In re*, 4 Giff. 179; 9 Cox, C. C. 279; 32 L. J., Ch. 224; 9 Jur., N. S. 570; 7 L. T. 704.

Although, by contemplation of law, the whole time during which assizes continue at one place is considered for some purposes as one legal day, yet the particular day on which a conviction actually took place may be proved when necessary; and therefore, where a convicted felon made a *bonâ fide* assignment of goods after the commission-day of the assizes, but before the day on which he was actually convicted:—Held, that the assignee could prove the actual day of the conviction, although the record mentioned only the commission-day, and that the assignment was valid. *Whitaker v. Wisbey*, 12 C. B. 44; 21 L. J., C. P. 116; 16 Jur. 411.

When a deed is made by a prisoner on the eve

of his trial for a capital offence, which assigns his property to another, it cannot be supported without proof of consideration. *Shaw v. Bran*, 1 Stark. 319.

If A., being in custody on a charge of felony, conveys all his property in trust for his wife for life, and then in trust for his son, and on the next day A. is convicted of the felony, this conveyance will be void as against the crown. *Morewood v. Wilkes*, 6 C. & P. 144.

Exercise of Power of Revocation.—A felon, shortly before his conviction, conveyed real estate to trustees upon certain trusts, reserving to himself a power of revocation. Whilst still undischarged he borrowed a sum of money, and, by a memorandum, agreed that it should be charged upon his settled estate:—Held, that the memorandum of charge was an equitable exercise of the power of revocation, and that such power was duly exercised in favour of the mortgagee. *Mainprice v. Pearson*, 25 W. R. 768.

Prisoner Acquitted on Ground of Insanity—Effect of Assignment by.—A person being in prison on a charge of felony, in order to avoid a forfeiture of his property in the event of a conviction, executed a voluntary deed, assigning his personal estate to his brother absolutely. He was tried, found not guilty, on the ground of insanity, and ordered to be imprisoned as a lunatic during her Majesty's pleasure:—Held, that the deed, being without consideration, and executed by an insane person under a total misapprehension, was inoperative, and that the representatives of the brother took no interest under it. *Manning v. Gill*, 13 L. R., Eq. 485; 41 L. J., Ch. 736; 26 L. T. 14; 20 W. R. 357; 12 Cox, C. C. 274.

3. EFFECT OF PARDON.

A pardon granted to a felon under the sign manual, has not the effect of a pardon under the great seal. *Gough v. Davies*, 2 Kay & J. 623; 25 L. J., Ch. 677.

The 5 Geo. 4, c. 84, s. 26, protects felons whose sentences have been remitted by the governor of a penal colony, in the enjoyment of property subsequently acquired by them, not only by their own industry, but also by other means. *Id.*

Therefore, where a convict who had received a conditional free pardon subsequently became entitled, as one of a class which could not be previously ascertained, to a share of personal property bequeathed by a will made long before the date of his conviction, he was entitled to retain this share against the crown. *Id.*

The 5 Geo. 4, c. 84, s. 26, enables a felon who has obtained a remission of sentence, to maintain an action in respect only of property to which he has acquired a title after conviction. *Fleming v. Smith*, 12 Ir. C. L. R. 404.

A conditional pardon, under 6 & 7 Vict. c. 7, is valid, although no place is exempted from its operation. *Barnett v. Blake*, 3 Drew. & Sm. 117; 31 L. J., Ch. 898; 8 Jur., N. S. 812; 6 L. T. 886; 10 W. R. 767.

In 1833, A. was convicted of felony, and transported. At this time, his wife was entitled to a fund, contingently on her surviving her mother,

In 1846, A. obtained a conditional pardon, available in all places, except the United Kingdom. The mother died in 1838, and the wife in 1852. On a petition by the crown for payment, the court, without deciding the right, merely ordered payment to the administrator of the wife. *Harrington, In re*, 29 Beav. 24.

A party sentenced to death for felony, which sentence was commuted to transportation for life, received a conditional free pardon in a penal colony:—Held, that such pardon did not alter the effect of the attainder in vesting his property in the crown. *Church, In re*, 16 Jur. 517.

4. OTHER POINTS RELATING TO.

Act of Bankruptcy—Convicted Felon not complying with Debtor Summons.]—Notwithstanding the provision contained in s. 8 of the act 33 & 34 Vict. c. 23, that every convicted felon shall, during the time while he shall be subject to the operation of the act, be incapable of alienating or charging any property, such a convict can pay a debt which is claimed by a debtor summons issued and served on him after his conviction, and if he fails to pay the debt within the time limited by the summons, he will commit an act of bankruptcy, upon which an adjudication can be made against him. *Graves, Ex parte, Harris, In re*, 19 Ch. D. 1; 51 L. J., Ch. 1; 45 L. T. 397; 30 W. R. 51; 46 J. P. 70; 14 Cox, C. C. 629; 15 Cox, C. C. 118—C. A.

Suspension of Civil Remedy until Public Prosecution.]—Where a debt arises out of a felonious act of the debtor, the civil remedy is suspended only until public justice is satisfied. *Dudley and West Bromwich Banking Company v. Spittle*, 1 Johns. & H. 14; 2 L. T. 47; 8 W. R. 351.

Therefore, where a party, who claimed to be a creditor for the amount paid by him on a forged cheque, had commenced a prosecution upon which a true bill was found and the prisoner was arraigned, but the prosecutor had abstained from bringing on the trial by direction of the judge, who thought the ends of justice satisfied by sentencing the prisoner for another forgery, to which he had pleaded guilty:—Held, that he had done enough to satisfy the rule of law, and that his civil remedy revived. *Id.*

A., a banker's clerk, misappropriated the moneys of his employers, but the false entries relating to the transactions were not discovered until after his death. The banking company having filed a bill in equity against his legal personal representative for an account, the defendant demurred, on the ground that the acts of A. were felonious, and therefore could not be made the ground of a suit in equity. The rule of public policy not applying, the demurrer was overruled, with costs. *Wickham v. Gatrill*, 2 Sm. & G. 353; 2 Eq. R. 805; 23 L. J., Ch. 783; 18 Jur. 768.

The civil remedies for suing the felon, which belong to the person whose property has been feloniously taken, are suspended, after the discovery of the commission of the offence, until the conviction of the felon, in order that the dignity of the law may be vindicated by the prosecution and conviction of the felon. But it is indifferent by whom the felon is prosecuted. *Chowne v. Baylis*, 31 Beav. 351; 31 L. J., Ch. 757; 8 Jur., N. S. 1028; 6 L. T. 739; 11 W. R. 5.

In an action for the recovery of a brooch, the pleas being not guilty and not possessed, the jury found a verdict for the plaintiff. A rule for a new trial having been obtained, on the ground that it appeared that the brooch was taken by the defendant under such circumstances as to prove a charge of felony, and that the judge ought therefore to have nonsuited:—Held, that the judge was bound to try the issues on the record, and that he was right in not having nonsuited the plaintiff. *Wells v. Abrahams*, 7 L. R., Q. B. 554; 41 L. J., Q. B. 306; 26 L. T. 433; 20 W. R. 659.

An action cannot be maintained where a declaration alleges a case of felony; secus, where the direction alleges only a misdemeanor. *Fissington v. Hutchinson*, 15 L. T. 390.

In an action by a woman for assaulting her and forcibly violating her person, whereby she was delivered of a child, the judge, upon her evidence, directed a nonsuit:—Held, that the direction was right, for if a rape had been committed no action would lie until after the defendant had been prosecuted; and if the plaintiff had consented she could not maintain an action for the assault. *Wellock v. Constantine*, 2 H. & C. 146; *S. P., Quinlan v. Barber*, Beatty's 1r. Rep. 47.

An insurance company granted a fire policy to S., and during the currency of the policy S.'s wife feloniously burnt the property insured. The company, not admitting any claim on the policy, brought an action against S. and his wife for the damage done by the act of the wife:—Held, that the action for the felony, if it were maintainable, was maintainable without shewing that the felon had been prosecuted. *Midland Insurance Company v. Smith*, 6 Q. B. D. 561; 50 L. J., Q. B. 329; 45 L. T. 411; 29 W. R. 850; 45 J. P. 699.

—What Debts Provable in Bankruptcy—Claim Arising out of Felony—No Prosecution.]

—Bankers allowed a customer to overdraw his current account on his depositing with them as security for the overdraft some bills of exchange drawn by him upon, and purporting to be accepted by, a third person. After the customer had overdrawn his account the bankers discovered that the acceptances were forgeries. They then communicated with the customer, and ultimately gave up the forged acceptances to him, receiving from him in exchange joint and several promissory notes of himself and his father. The customer was afterwards adjudicated a bankrupt. The notes were not paid at maturity:—Held, that though the bankers had not prosecuted the bankrupt for the felony, and whether they had or had not agreed not to prosecute him, they were entitled to prove in the bankruptcy for the balance due to them upon the bankrupt's current account. *Leslie, Ex parte, Guerrier, In re*, 20 Ch. D. 131; 51 L. J., Ch. 689; 46 L. T. 548; 30 W. R. 344; 15 Cox, C. C. 125—C. A.

Per James and Bramwell, L. JJ.:—Even if a person injured by a felony is debarred from proving in the bankruptcy of the felon in respect of the injury until he has prosecuted the felon, the obligation to prosecute does not extend to his trustee in bankruptcy, though the injured person himself tendered his proof before his own bankruptcy. *Ball, Ex parte, Shepherd, In re*

10 Ch. D. 667; 48 L. J., Bk. 57; 40 L. T. 141; 27 W. R. 563; 14 Cox, C. C. 237—C. A.

Per Baggallay, L. J. :—A person who has been injured by a felony is not allowed by the policy of the law to seek civil redress, if he has failed in his duty of bringing or endeavouring to bring the felon to justice. And the trustee in bankruptcy of the injured person stands in no better position than he himself. *Id.*

But this rule does not apply where the offender has escaped from the jurisdiction, before a prosecution could have been commenced by the exercise of reasonable diligence. *Id.*

— **Statement of Claim shewing Felony.**—A statement of claim is not demurrable on the ground that it shews the cause of action to be a felony for which the felon has not been prosecuted. *Roepe v. D'Avignon*, 10 Q. B. D. 412; 48 L. T. 761; 47 J. P. 248.

No Defences to Action against Master for Damage caused by Servant.—The defence that the act complained of amounted to a felony does not apply to an action against a master for damages sustained through the wrongful act of a servant. *Osborn v. Gillett*, 8 L. R., Ex. 88; 42 L. J., Ex. 53; 28 L. T. 197; 21 W. R. 409.

Plea of Conviction.—Where a plea, that the plaintiff since the last pleading has been convicted of felony, is pleaded *darrein continuance*, the plaintiff may confess the plea, and sign judgment for his costs. *Barnett v. London and North-Western Railway Company*, 5 H. & N. 604.

Order directing Disposal of Property found on Prisoner.—*See infra*, XXII, LARCENY.

5. COMPOUNDING FELONIES AND INFORMATIONS.

Felonies.—The law does not authorize a private person to forego a prosecution upon any terms; and even if a promise is given and broken in such a manner as a jury would consider scandalous, yet, in point of law, that will not make any difference. *Reg. v. Daly*, 9 C. & P. 342.

— **Indictment.**—If, in an indictment for compounding felony, it is averred that the defendant did desist, and from that time hitherto had desisted, from all further prosecution; and it appears, that, after the alleged compounding, he prosecuted the offender to conviction, the judge will direct an acquittal. *Rea v. Stone*, 4 C. & P. 379.

To what Cases Applicable.—The 18 Eliz. c. 5, which prohibits the compounding of any offence upon colour or pretence of process, or without process upon colour of any offence, against any penal law, does not apply to offences cognizable only before magistrates; and an indictment for compounding such an offence will be bad in arrest of judgment. *Rea v. Crisp*, 1 B. & A. 282.

After Conviction.—A popular indictment must not be compounded after conviction. *Bury v. Levy*, 1 W. Bl. 443.

Taking Penalty without Leave.—On an indictment on 51 Eliz. c. 5, s. 4, for compounding an offence against 13 Geo. 3, c. 84, s. 13, and

taking money without process to prevent an action being brought :—Held, that the party so doing was liable to the punishment prescribed by the former act for taking such penalty without leave of a court at Westminster, or without judgment or conviction. *Rea v. Gotley*, R. & R. C. C. 84.

No Offence Committed.—A threatened B. that he would inform against him for selling spirits without a licence, unless B. would give him a sum of money. B. had not, in fact, sold any spirits, but he gave A. the money to prevent an information :—Held, that A. was indictable under 18 Eliz. c. 5, s. 4, although B. had not committed any offence, and although no information was ever preferred, nor any process sued out. *Reg. v. Best*, 9 C. & P. 368; 2 M. C. C. 125.

XVIII. FORCIBLE ENTRY AND DETAINER.

Statutes.—5 R. 2, st. 1, c. 8; 8 Hen. 6, c. 9; 31 Eliz. c. 11; 21 Jac. 1, c. 15.

Title to Sue.—A person using land as a garden for more than twenty years, under permission from the owner to do so, in order to keep it from trespassers, the owner from time to time coming on the land and giving directions as to cutting the trees :—Held, that he had not got a title so as to enable him to sue a claimant under the owner for a forcible entry. *Allen v. England*, 3 F. & F. 49.

What constitutes.—When a person having the legal title to land is in actual possession of it, the attempt to eject him by force brings the person who makes it within the provisions of the statute against forcible entry. *Lous v. Telford*, 1 App. Cas. 414; 45 L. J., Ex. 613; 35 L. T. 69; 13 Cox, C. C. 226. Reversing 31 L. T. 90—Ex. Ch.

It will do so though the possession of the person having such legal title has only just commenced, though he may himself have obtained it by forcing open a lock, though his ejection has not been made by a "multitude" of men, nor attended with any great use of violence, and though the person who attempts to eject him may even set up a claim to the possession of the land. *Id.*

If a person, who has a legal right of entry upon land which is in the possession of a wrongdoer, is allowed to enter peaceably through the outer door, it is still illegal for him to turn out the wrongdoer with violence. *Edwick v. Hawkes*, or *Edridge v. Hawker*, 18 Ch. D. 199; 50 L. J., Ch. 577; 45 L. T. 168; 29 W. R. 913.

To constitute a forcible entry, or a forcible detainer, it is not necessary that any one should be assaulted, but only that the entry or the detainer should be with such numbers of persons, and shew of force, as is calculated to deter the rightful owner from sending the persons away, and resuming his own possession. *Milner v. Maclean*, 2 C. & P. 17.

An indictment for a forcible entry cannot be supported by evidence of a mere trespass; but there must be proof of such force, or at least such shew of force, as is calculated to prevent any resistance. *Rea v. Smyth*, 5 C. & P. 201; 1 M. & Rob. 156.

A person having no possession or title to premises, but fraudulently pretending to have such title, and so allowed by the servant of the true

owner to enter, does not thereby acquire possession, but may be forcibly expelled by him on discovery of the fraud; and if in such a case assaults are committed in consequence, the question for the jury will be, whether there has been an excess of violence. A subsequent attempt by force to re-enter, and so causing an affray:—Held, an indictable offence, for which the party might be given in charge. *Collins v. Thomas*, 1 F. & F. 416.

If a tenant of a house, after regular notice to quit, abandons it, and locks it up, leaving some articles of furniture in it, and the landlord breaks it open and takes possession, the tenant cannot maintain trespass: his remedy, if any, is by indictment for forcible entry. *Turner v. Meymott*, 7 Moore, 574; 1 Bing. 158. See *Hilary v. Gay*, 6 C. & P. 284; *Newton v. Harland*, 2 Scott, N. R. 474; 1 M. & G. 644; *Burling v. Read*, 11 Q. B. 904; *Pollen v. Brewer*, 7 C. B., N. S. 371.

Indictment.—An indictment at common law, charging the defendants with having unlawfully, and with a strong hand, entered the prosecutor's mill, and expelled him from the possession, is good. *Ree v. Wilson*, 8 T. R. 357.

Scemle, in an indictment for a forcible entry, it is not necessary to allege the prosecutor's title to the property, it is sufficient to state the possession; but if the title is stated it need not be proved. *Reg. v. Child*, 2 Cox, C. C. 102.

A wife separated from her husband took a house, of which the husband, with the landlord's consent, obtained possession. Scemle, that if the wife came with others, and made a forcible entry into this house, she might be convicted on an indictment for forcible entry, stating it to be the house of the husband. *Ree v. Smyth*, 5 C. & P. 201; 1 M. & Rob. 156.

Evidence.—A constable entered a house with a warrant in his hand, and searched the house; and for such entering and searching was indicted for a forcible entry:—Held, that his counsel might ask the witnesses for the prosecution what the constable said, at the time, as to whom he was searching for. *Ree v. Smyth*, 5 C. & P. 201; 1 M. & Rob. 156.

Upon the trial of an indictment for a forcible entry or a detainer, the party dispossessed was not a competent witness for the prosecution, before 6 & 7 Vict. c. 85, and 14 & 15 Vict. c. 99. *Ree v. Williams*, 4 M. & R. 471; 9 B. & C. 549; *S. P.*, *Ree v. Beavan*, R. & M. 342.

On the trial of such an indictment, the defendant cannot impeach the title of the party dispossessed. *Ib.*

Hearing by Justices—Mandamus.—The court refused to grant a mandamus to compel magistrates to hear a complaint and act summarily under the statutes relating to forcible entry and detainer. *Davy, Ex parte*, 2 D., N. S. 24.

— **Conviction by—Sufficiency of.**—The 8 Hen. 6, c. 9, was intended to give a summary jurisdiction in case of forcible detainer after an unlawful entry; and a conviction by justices on that statute, merely stating an entry and a forcible detainer, is insufficient. *Ree v. Oakley*, 4 B. & Ad. 307; 1 N. & M. 58.

The 15 R. 2, c. 2, gave justices a summary

jurisdiction to convict, on their own view, for a forcible detainer after a forcible entry. *Ib.*

In a conviction under 8 Hen. 6, c. 9, for a forcible detainer, it must appear on the face of the conviction that there was an unlawful entry. *Ree v. Wilson*, 5 N. & M. 164; 3 A. & E. 817; 1 H. & W. 387.

A conviction under a forcible detainer, on the view merely of the justices, without any evidence of an unlawful entry, is bad, even though information and complaint of an unlawful expulsion are stated. *Ib.*

In a conviction for a forcible detainer, under 8 Hen. 6, c. 9, where the magistrates proceed upon view, it is not necessary to set out the particular facts presented to their view. *Ree v. Wilson*, 3 N. & M. 753; 1 A. & E. 627.

At the time of the conviction, the defendant tendered to the justices a traverse of the force complained of; and a few days after an inquisition was held before the magistrates, for the purpose of trying the alleged force by jury, who, after hearing evidence adduced by both parties, found the defendant guilty; and the magistrates then gave restitution. A return was made to the court, on certiorari, of the conviction and inquisition. The latter was entitled an inquisition, by the oaths of twelve, &c., before, &c., who say upon their oaths that, &c.; stating an unlawful entry and detainer, but not reciting any complaint made by the prosecutor:—Held, that the inquisition was founded on the conviction, and could not be sustained, the conviction being void; and that the inquisition, even if looked at alone, was bad, as it did not state any complaint, nor by what authority the jury was summoned. *Ib.*

In order to justify a conviction by justices, under 15 Ric. 2, c. 2, and 8 Hen. 6, c. 9, it must be proved before them that there was, as well an unlawful entry on the premises as a forcible detainer. *Attwood v. Joliffe*, 3 New Sess. Cas. 116.

Where a conviction stated that justices had convicted A. of forcible detainer upon their own view, and that afterwards a complaint was made to the justices that A. forcibly entered the premises, and that notice of such complaint was given to A., who received the notice, but said nothing, and then went on to allege that the justices received evidence on oath of the unlawful entry:—Held, that the conviction was bad, for not shewing that A. had been summoned to answer the charge of the unlawful entry, or that he had any opportunity afforded him of defending himself against such charge. *Ib.*

V. having been in possession of a house from May to October, the defendants called there, and, insisting that V. had no title, proceeded to take the keys out of the room doors. Upon their doing so, V. gave them into custody for stealing the keys; but the magistrate refused to detain them. They then returned to the house, and having procured a sledge-hammer, forced the inner door of the hall, and some having entered that way, and some by a staircase window, overpowering the prosecutor's opposition, and furnished with a hatchet and other weapons, after a struggle which caused a disorderly crowd to assemble, they ejected the prosecutor and his servants. From the commencement of the proceedings till the conclusion, a female servant of the prosecutor's was in the kitchen:—Held, assuming the title of the prosecutor to have been

bad, and that the defendants had acted by the orders of those who had a good title to the premises, that the evidence was sufficient to support a conviction of the defendants for a forcible entry and riot. *Reg. v. Studd*, 14 L. T. 633; 14 W. R. 806.

Restitution—Application, Grounds for.]—An averment in an indictment for a forcible entry that the prosecutor was seised, is sufficient to found an application for a writ of restitution; and it need not be shewn by the prosecutor that he still continued to be seised. *Ree v. Dillon*, 2 Chit. 314.

An indictment charged that the defendants into one message, then and there being in the possession of W. P., he W. P. then and there being also seised thereof, with force of arms, did enter, and W. P., from the peaceable possession with force and arms, did put out. After a conviction of the defendants:—Held, that this was a sufficient averment of the present seisin of W. P. to warrant the court in awarding a writ of restitution. *Ree v. Hoare*, 6 M. & S. 266.

Judge has Discretion.]—A judge at the assizes may, in his discretion, refuse to award restitution, after an indictment for forcible entry and detainer has been found by the grand jury, and the court has no power to review his decision. *Reg. v. Harland*, 1 P. & D. 93; 8 A. & E. 826; 2 Lewin, C. C. 171; 2 M. & Rob. 141.

Awarded by Justice—Inquisition.]—In order to authorize a justice to award restitution pursuant to an inquisition taken under 8 Hen. 6, c. 9, for a forcible entry, the inquisition should set forth the estate possessed by the party in the property disputed. *Reg. v. Bowser*, 8 D. P. C. 128; 1 W., W. & H. 345.

Certiorari.]—Where the indictment is brought before the Queen's Bench by certiorari, that court is bound, upon conviction, to award restitution. *Ree v. Williams*, 4 M. & R. 471; 9 B. & C. 549.

So the court is bound to award a restitution, as a consequence of quashing a conviction for an unlawful detainer under 8 Hen. 6, c. 9, which is bad, without inquiring into the legal or equitable claim of the respective parties. *Ree v. Wilson*, 6 N. & M. 625; 3 A. & E. 817; 2 H. & W. 225.

Before Trial.]—For the mode of proceeding to obtain restitution on application to a judge, after indictment found, but before trial, see *Ree v. Hake*, 4 M. & R. 483.

Damages—Recovery of, against true Owner of Land.]—An action may be maintained by a person who has been in possession of lands, without title, against the true owner of the lands, for with force and strong hand entering the lands, expelling the plaintiff from the possession, and taking goods the property of the defendant then being on the lands. *Newton v. Harland* (1 Sc. N. R. 474) observed upon. 10 Car. 1, sess. 3, c. 13, is similar to 21 Jac. 1, c. 15. *Beattie v. Mair*, 10 L. R., Ir. 208.

Damages cannot be recovered against the rightful owner for a forcible entry on land, for the stat. 5 Ric. 2, st. 1, c. 8, only makes a forcible

entry an indictable offence, and does not create any civil remedy for it. But for any independent wrong (such as an assault or an injury to furniture) committed in the course of the forcible entry, damages can be recovered, even by a person whose possession was wrongful, for the statute makes a possession obtained by force unlawful, even when it is so obtained by the rightful owner. *Newton v. Harland* (1 Scott, N. R. 474), *Pollen v. Brewer* (7 C. B., N. S. 371), and *Louis v. Telford* (1 App. Cas. 414) considered. *Beddall v. Maitland*, 17 Ch. D. 174; 50 L. J., Ch. 401; 44 L. T. 248; 29 W. R. 484.

Licence to Eject—Legality of.]—A licence by a tenant to his landlord to eject him on a specified day without any process of law is void, as authorizing the commission of an act which is made illegal by the act 5 Ric. 2, st. 1, c. 8. *Edwick v. Hawkes* or *Edridge v. Hawkes*, 18 Ch. D. 199; 50 L. J., Ch. 577; 45 L. T. 168; 29 W. R. 913.

XIX. FORGERY AND UTTERING FORGED INSTRUMENTS

A. FORGERY.

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1. STATUTE.

24 & 25 Vict. c. 98, is the consolidating statute of the law of England and Ireland, relating to indictable offences by forgery, in force, which, by s. 56, commenced and took effect on the 1st of November, 1861, and, by s. 55, nothing in the statute contained extends to Scotland except as expressly therein provided.

By 33 & 34 Vict. c. 58, s. 7, the provisions of the above act are extended to Scotland.

2. GENERAL PRINCIPLES.

Definition.—Forgery is the false making of an instrument, which purports on the face of it to be good and valid for the purposes for which it was created, with a design to defraud any person or persons. *Reg. v. Jones*, 2 East, P. C. 991.

Primâ facie Resemblance.—In forgery there need not be an exact resemblance; it is sufficient if the instrument is primâ facie fitted to pass for a true instrument. *Reg. v. Elliot*, 1 Leach, C. C. 175, 179; 2 East, P. C. 951; *S. P.*, *Reg. v. Mahony*, 6 Cox, C. C. 487.

By making Mark.—To make a mark in the name of another person, with intent to defraud the person whose name is assumed, is forgery. *Reg. v. Dunn*, 1 Leach, C. C. 57; 2 East, P. C. 962.

Alteration of Document.—It is a forgery to alter a document which a party has previously forged himself; and he may be convicted of forging and uttering it in the state to which it was so altered. *Reg. v. Kinder*, 2 East, P. C. 856.

Contents Unknown by Party Signing.—It is not forgery fraudulently to procure a party's signature to a document, the contents of which have been altered without his knowledge. *Reg. v. Chadwick*, 2 M. & Rob. 545.

Or forgery fraudulently to induce a person to execute an instrument on a misrepresentation of its contents. *Reg. v. Collins*, 2 M. & Rob. 461.

No Uttering Necessary.—A person may be convicted of forgery with intent to defraud, although the note was found in his custody when apprehended, and never, in fact, uttered by him. *Reg. v. Crooker*, 2 Leach, C. C. 987; 2 N. R. 87; *R. & R. C. C.* 97.

Fraud not Effected.—Forging an order from

one to charge certain goods contained in a schedule to his account, and to appropriate part of the proceeds to the forger's own use, done with intent to defraud the principal, is forgery at common law, though the fraud is not effected. *Ree v. Ward*, 2 East, P. C. 861.

Where no Person to be Defrauded.—A man may be convicted of forging and uttering an instrument, with intent to defraud, though there is no person in a situation to be defrauded by his act. *Reg. v. Nash*, 2 Den. C. C. 448; 21 L. J., M. C. 147; 16 Jur. 553.

Where a person had made alterations in a diploma of the College of Surgeons, to make it appear to be a document issued by the college to him, and had hung it up in his house, and shewed it to certain persons, it was found by the case reserved for the court that he had no intent in forging to commit any particular fraud or specific wrong to any individual:—Held, that he could not be convicted of forgery. *Reg. v. Hodgson*, Dears. & B. C. C. 3; 7 Cox, C. C. 122; 25 L. J., M. C. 78; 2 Jur., N. S. 453.

There must be a Document.—A forgery must be of some document or writing; therefore the painting an artist's name in the corner of a picture, in order to pass it off as an original picture by that artist, is not a forgery. *Reg. v. Cross*, Dears. & B. C. C. 460; 7 Cox, C. C. 494; 27 L. J., M. C. 54; 3 Jur., N. S. 1309.

B. was in the habit of selling certain powders, wrapped in printed papers, describing their use, and having a printed signature at the end. The prisoner had a number of wrappers printed in imitation of B.'s, so as to deceive persons of ordinary observation, and to make them believe them to be B.'s; he then sold spurious powders, wrapped up in these papers, as B.'s powders; and all this was done with intent to defraud:—Held, that there was no forgery. *Reg. v. Smith*, Dears. & B. C. C. 566; 8 Cox, C. C. 32; 27 L. J., M. C. 225; 4 Jur., N. S. 1003.

Mark made with Marksman's Assent.—The 11 & 12 Vict. c. 63, directs that the votes for the election of members of local boards of health shall be given by means of voting papers, and by s. 25, "if any voter cannot write, he shall affix his mark at the foot of a voting paper in the presence of a witness, who shall attest and write the name of the voter against the same, as well as the initials of such voter against the name of every candidate for whom the voter intends to vote." The defendants, who took an active part on behalf of some of the candidates, went to the houses of voters who were marksmen, to assist in filling up the voting papers, and having obtained the express or implied consent of voters or members of their families, filled up the papers with the proper names and marks of the voters, and put their own names as attesting witnesses without obtaining the actual signatures or marks of the parties themselves:—Held, that this did not constitute the offence of forgery at common law. *Reg. v. Hartshorn*, 6 Cox, C. C. 395.

3. PARTICULAR OFFENCES.

a. Bank Notes.

Forging, Altering or Uttering.—By 24 & 25 Vict. c. 98, s. 12, whosoever shall forge or alter,

or shall offer, utter, dispose of or put off, knowing the same to be forged or altered, any note or bill of exchange of the Bank of England or of the Bank of Ireland, or of any other body corporate, company or person carrying on the business of bankers, commonly called a bank note, a bank bill of exchange, or a bank post bill, or any indorsement on or assignment of any bank note, bank bill of exchange or bank post bill with intent to defraud, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Purchasing or Receiving.—By s. 13, whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall purchase or receive from any other person, or have in his custody or possession, any forged bank note, bank bill of exchange or bank post bill, or blank bank note, blank bank bill of exchange or blank bank post bill, knowing the same to be forged, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years, and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour.

Putting off.—Giving to a confederate a forged bank note, that he may utter it, is a disposing and putting away thereof. *Re v. Palmer*, R. & R. C. C. 72; 1 N. R. 96; 2 Leach, C. C. 978. And see *Brooks v. Warwick*, 2 Stark. 380.

What is Forgery.—The changing the figure 2 into the figure 5, in a bank note (220*l.* to 250*l.*), is forging and counterfeiting a bank note. *Re v. Dawson*, 1 Stra. 19; 2 East, P. C. 978.

So, the altering a banker's one-pound note, by substituting the word "ten" for the word "one," is a forgery, although it thereby purports to be a note for ten "pound," and not pounds. *Re v. Post*, R. & R. C. C. 101.

A forged bank note, although the word "pounds" is omitted in the body of it, and there is no water-mark in the paper, is a counterfeit note for the payment of money. *Re v. Elliot*, 2 East, P. C. 951. See *Sanderson v. Piper*, 7 Scott, 408; 5 Bing. N. C. 425; 2 Arn. 58; 3 Jur. 773.

Expunging, by a certain liquor, a notification of payment of part of the contents of a bank bill, written on the face of it, would sustain an indictment on 8 & 9 Will. 3, c. 20, s. 36, for raising out an indorsement on such bill. *Re v. Bigg*, 2 East, P. C. 882; 3 P. Wms. 419.

The counterfeit making of any part of a genuine note, which may give it a greater currency, is forgery; therefore, if a note is made payable at a country banker's or at his banker's in London, who fails, it is forgery to alter the name of that London banker to the name of another London banker, with whom the maker makes his other notes payable after the failure of the first. *Re v. Treble*, 2 Taunt. 328; 2 Leach, C. C. 1040; R. & R. C. C. 164.

Instruments for making Paper for Notes of the Bank of England or of Ireland.—By 24 & 25 Vict. c. 98, s. 14, whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall make or use, or knowingly have in his custody or possession, any frame, mould or instrument for the making of paper with the words "Bank of England" or "Bank of Ireland," or any part of such words intended to resemble and pass for the same, visible in the substance of the paper, or for the making of paper with curved or waving bar lines, or with the laying wire lines thereof in a waving or curved shape, or with any number, sum or amount expressed in a word or words in roman letters, visible in the substance of the paper, or with any device or distinction peculiar to, and appearing in the substance of the paper used by, the Banks of England and Ireland respectively for any notes, bills of exchange or bank post bills of such banks respectively, or shall make, use, sell, expose to sale, utter or dispose of, or knowingly have in his custody or possession, any paper whatsoever with the words "Bank of England" or "Bank of Ireland," or any part of such words intended to resemble and pass for the same, visible in the substance of the paper, or any paper with curved or waving bar lines, or with the laying wire lines thereof in a waving or curved shape, or with any number, sum or amount expressed in a word or words in roman letters, appearing visible in the substance of the paper, or with any device or distinction peculiar to, and appearing in the substance of the paper used by, the Banks of England and Ireland respectively for any notes, bills of exchange or bank post bills of such banks respectively, or shall by any art or contrivance cause the words "Bank of England" or "Bank of Ireland," or any part of such words intended to resemble and pass for the same, or any device or distinction peculiar to, and appearing in the substance of the paper used by, the Banks of England and Ireland respectively for any notes, bills of exchange or bank post bills of such banks respectively, to appear visible in the substance of any paper, or shall cause the numerical sum or amount of any bank note, bank bill of exchange or bank post bill, blank bank note, blank bank bill of exchange or blank bank post bill, in a word or words in roman letters, to appear visible in the substance of the paper whereon the same shall be written or printed, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years, and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour.

By s. 15, nothing in the last preceding section contained shall prevent any person from issuing any bill of exchange or promissory note having the amount thereof expressed in guineas, or in a numerical figure or figures denoting the amount thereof in pounds sterling, appearing visible in the substance of the paper upon which the same shall be written or printed, nor shall prevent any person from making, using or selling any paper having waving or curved lines or any other devices in the nature of water-marks visible in the substance of the paper, not being bar lines or laying wire lines, provided the same are not

so contrived as to form the groundwork or texture of the paper, or to resemble the weaving or curved laying wire lines or bar lines of the water-marks of the paper used by the Banks of England and Ireland respectively.

Plates for Notes, &c., of Bank of England or of Ireland.—By 24 & 25 Vict. c. 98, s. 16, whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall engrave or in anywise make upon any plate whatsoever, or upon any wood, stone, or other material, any promissory note, bill of exchange, or bank post bill, or part of a promissory note, bill of exchange, or bank post bill, purporting to be a bank note, bank bill of exchange or bank post bill of the Bank of England or of the Bank of Ireland, or of any other body corporate, company or person carrying on the business of bankers, or to be a blank bank note, blank promissory note, blank bill of exchange, or blank bank post bill of the Bank of England or of the Bank of Ireland, or of any such other body corporate, company or person as aforesaid, or to be a part of a bank note, promissory note, bank bill of exchange or bank post bill of the Bank of England or of the Bank of Ireland, or of any such other body corporate, company or person as aforesaid, or shall use any such plate, wood, stone or other material, or any other instrument or device, for the making or printing any bank note, bank bill of exchange or bank post bill, or blank bank note, blank bank bill of exchange, or blank bank post bill, or part of a bank note, bank bill of exchange or bank post bill, or knowingly have in his custody or possession any such plate, wood, stone or other material, or any such instrument or device, or shall knowingly offer, utter, dispose of or put off, or have in his custody or possession, any paper upon which any blank bank note, blank bank bill of exchange or blank bank post bill of the Bank of England or of the Bank of Ireland, or of any such other body corporate, company or person as aforesaid, or part of a bank note, bank bill of exchange or bank post bill, or any name, word or character resembling or apparently intended to resemble any such subscription, shall be made or printed, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years, and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (*Former statute*, 11 Geo. 4 & 1 Will. 4, c. 66, s. 18.)

Whether extending to Scotch Banks.—The 24 & 25 Vict. c. 98, s. 16, extends to the engraving in England without authority of notes purporting to be notes of a banking company carrying on business in Scotland only, notwithstanding that s. 55 enacts that nothing in the act contained shall extend to Scotland. *Reg. v. Brackenridge*, 1 L. R., C. C. 133; 37 L. J., M. C. 86; 18 L. T. 369; 16 W. R. 816; 11 Cox, C. C. 96. *See also* 33 & 34 Vict. c. 58, s. 7.

Plate resembling Bank Note.—By 24 & 25 Vict. c. 98, s. 17, whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall engrave or in anywise make upon any plate whatsoever, or upon any wood, stone or other material, any word, number, figure, device, character or ornament, the impression taken from which shall resemble or apparently be intended to resemble any part of a bank note, bank bill of exchange or bank post bill of the Bank of England or of the Bank of Ireland, or of any other body corporate, company or person carrying on the business of bankers, or shall use, or knowingly have in his custody or possession, any such plate, wood, stone or other material, or any other instrument or device for the impressing or making upon any paper or other material any word, number, figure, character or ornament which shall resemble or apparently be intended to resemble any part of a bank note, bank bill of exchange or bank post bill of the Bank of England or of the Bank of Ireland, or of any such other body corporate, company or person as aforesaid, or shall knowingly offer, utter, dispose of or put off, or have in his custody or possession, any paper or other material upon which there shall be an impression of any such matter as aforesaid, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years, and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

"Note," what is.]—A. cut out the centre part of a one-pound note of a banking company, and took the ornamental border to an engraver, representing that he wanted to have a plate made to this border, intending to fill up the centre with the title of some oil or cosmetic, of which the firm in whose employ he represented himself to be were the vendors. A plate was accordingly made and delivered to him, when he was immediately apprehended with the plate in his possession, and was tried and convicted upon an indictment framed upon the 11 Geo. 4 & 1 Will. 4, c. 66, s. 18:—Held, that by the word "note" is not meant merely the obligation or writing, but the whole paper or thing which circulates as a note; and therefore the border or ornamental margin is part of a note within the meaning of the statute. *Reg. v. Keith*, Dears. C. C. 486; 3 C. L. R. 692; 6 Cox, C. C. 533; 24 L. J., M. C. 110; 1 Jur., N. S. 464.

— Extrinsic Evidence.]—In order to ascertain whether that which was engraved on the plate purported to be part of the note, extrinsic evidence is admissible, and for that purpose the jury may compare the plate with a genuine note of the company. *Id.*

. Making or Imitating Bank Paper.]—By s. 18, whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall make or use any frame, mould or instrument for the manufacture of paper, with the name or firm of any body corporate, company or person carrying on the business of bankers (other than and except the Banks of England and Ireland respectively), appearing

visible in the substance of the paper, or knowingly have in his custody or possession any such frame, mould or instrument, or make, use, sell, expose to sale, utter or dispose of, or knowingly have in his custody or possession, any paper in the substance of which the name or firm of any such body corporate, company or person shall appear visible, or by any art or contrivance cause the name or firm of any such body corporate, company or person to appear visible, in the substance of the paper upon which the same shall be written or printed, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years, and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Engraving Plates for Foreign Bills or Notes.]

—By s. 19, whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall engrave or in anywise make upon any plate whatsoever, or upon any wood, stone, or other material, any bill of exchange, promissory note, undertaking or order for payment of money, or any part of any bill of exchange, promissory note, undertaking or order for payment of money, in whatsoever language the same may be expressed, and whether the same shall or shall not be or be intended to be under seal, purporting to be the bill, note, undertaking or order, or part of the bill, note, undertaking or order, of any foreign prince or state, or of any minister or officer in the service of any foreign prince or state, or of any body corporate or body of the like nature constituted or recognized by any foreign prince or state, or of any person or company of persons resident in any country not under the dominion of her Majesty, or shall use, or knowingly have in his custody or possession, any plate, stone, wood or other material upon which any such foreign bill, note, undertaking or order, or any part thereof, shall be engraved or made, or shall knowingly offer, utter, dispose of or put off, or have in his custody or possession, any paper upon which any part of any such foreign bill, note, undertaking or order shall be made or printed, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years, and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (Previous enactments, 43 Geo. 3, c. 139, ss. 1, 2, and 11 Geo. 4 & 1 Will. 4, c. 66, s. 19.)

What within Statute.]—Making on a glass plate a positive impression of an undertaking of a foreign state for the payment of money by means of photography, without lawful authority or excuse, is a felony within this statute. *Reg. v. Rinaldi*. L. & C. 330; 33 L. J., M. C. 28; 9 L. T. 395; 12 W. R. 87.

Jointly employing Innocent Agent.]—Three foreigners were indicted for feloniously engraving and making two parts of a promissory note of the Emperor of Russia. The plates were engraved by an Englishman, who was an innocent

agent in the transaction. Two of the prisoners only were present at the time when the order was given for the engraving of the plates; but they said they were employed to get it done by a third person, and there was some evidence to connect the third prisoner with the other two in subsequent parts of the transaction. The questions left to the jury were—first, whether the other two, who gave the order for the engraving, knew the nature of the instrument; and secondly, whether all three concurred in the order given. The judge told the jury that, in order to find all three guilty, they must be satisfied that they jointly employed the engraver, but that it was not necessary that they should all be present when the order was given, as it would be sufficient if one first communicated with the other two, and that all three concurred in the employment of the engraver. The jury found the two guilty who gave the order. The third prisoner was acquitted. *Reg. v. Mazeau*, 9 C. & P. 676.

What a Foreign Note.]—The 11 Geo. 4 & 1 Will. 4, c. 66, s. 18, applied to plates of promissory notes of persons carrying on the business of bankers in the province of Upper Canada. *Reg. v. Hannon*, 9 C. & P. 11; 2 M. C. C. 11.

The forging and uttering a Prussian treasury note for the payment of one dollar was within 43 Geo. 3, c. 139, s. 1. *Reg. v. Goldstein*, 7 Moore, 1; 3 B. & B. 201; 10 Price, 88; R. & R. C. C. 473.

The 43 Geo. 3, c. 139, made to prevent forgery in Great Britain of foreign securities, was not to be understood to require that such securities should possess the technical properties required by the law of England, it being sufficient if they imported on the face of the whole instrument an undertaking or order for payment of money. *Id.*

Indictment—Form and Contents.]—In an indictment for forging, the words, “purporting to be a bank note,” mean that the instrument upon the face of it appears to be a bank note; and the want of such appearance cannot be supplied by the representation of the party uttering it. *Reg. v. Jones*, 1 Leach, C. C. 204; 2 East, P. C. 883; 1 Dougl. 302.

Where an indictment on 41 Geo. 3, c. 57, s. 2, stated that the prisoner knowingly and without any authority from a certain corporate company called, &c., had in his custody a certain plate on which was engraved part of a promissory note, purporting to be the promissory note of the company; and it appeared that this company carried on the business of bankers, although incorporated for a totally different purpose:—Held, that the indictment was bad, having omitted to aver that the company “carried on the business of bankers.” *Reg. v. Catapodi*, R. & R. C. C. 65.

A bank post bill cannot, in an indictment for forging or uttering, be described as a bill of exchange; but it may be described as a bank bill of exchange. *Reg. v. Birkett*, R. & R. C. C. 251.

b. Bills of Exchange and Promissory Notes.

- i. The Offence.
- ii. Indictment, 236.
- iii. Evidence, 238.

i. The Offence.

Statute.]—By 24 & 25 Vict. c. 98, s. 22, who-

soever shall forge or alter, or shall offer, utter, dispose of or put off, knowing the same to be forged or altered, any bill of exchange, or any acceptance, indorsement or assignment of any bill of exchange, or any promissory note for the payment of money, or any indorsement or assignment of any such promissory note, with intent to defraud, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

What are.]—An instrument payable to the order of A., and directed "at Messrs. P. & Co., bankers," may be described as a bill of exchange in an indictment for forgery. *Reg. v. Smith*, 2 M. C. C. 295.

A writing directed to A. & Co., requiring them to pay the bearer on demand a sum of money, is not, on an indictment for forgery, a bill of exchange or an order for the payment of money. *Reg. v. Curry*, 2 M. C. C. 218.

A document in the ordinary form of a bill of exchange, but requiring the drawee to pay to his own order, and purporting to be indorsed by the drawer, and accepted by the drawee, cannot, in an indictment for forgery and uttering, be treated as a bill of exchange. *Reg. v. Bartlett*, 2 M. & Rob. 362.

An instrument drawn by A. upon B., requiring him to pay to the order of C. a certain sum, at a certain time, "without acceptance," is a bill, and may be so described in an indictment for forgery. *Reg. v. Kinnear*, 2 M. & Rob. 117.

A promissory note for the payment of one guinea in cash, or Bank of England note, was not a note for the payment of money within 2 Geo. 2, c. 25. *Reg. v. Wileocks*, 2 Russ. C. & M. 457.

A person forging a scaman's advance note cannot be indicted for forging or uttering it as a promissory note. *Reg. v. Howie*, 11 Cox, C. C. 320.

Invalid in Form.]—Forging a bill or a note for less than 20s. or 5*l.*, which does not comply with the requisites of 17 Geo. 3, c. 30, or any other bill or note which the legislature has declared void, is not within the statutes against forgery. *Reg. v. Moffatt*, 1 Leach, C. C. 431; 2 East, P. C. 954.

On an indictment for forging a note, it appeared that it was not payable to the bearer on demand, or payable in money; that the maker only promised to take it in payment, and that the requisitions of the 17 Geo. 3, c. 30, were not complied with:—Held, that the forgery of such an instrument was not the subject of an indictment at common law. *Reg. v. Burke*, R. & R. C. C. 496.

An order for the payment of prize-money, signed in the name of a seaman, was a bill of exchange within 7 Geo. 2, c. 22, the forgery of which was felony, although the requisites of 32 Geo. 3, c. 34, s. 2, had not been complied with. *Reg. v. McIntosh*, 2 East, P. C. 942, 956; 2 Leach, C. C. 883.

Signature need not be a Fac-simile.]—In order to complete the offence of forgery, the

signature need not be an exact fac-simile of that of the person represented, and a slight variance, if not such as would under the circumstances put a person on inquiry, will not suffice to take such a forgery out of the definition of the offence, when applied to the falsely putting the name of an existing person to an instrument, without authority, for the purpose of fraud. P. M. promised to get his mother-in-law, "C. W.'s," name to two notes. He brought the two notes, which in the meantime he had got his wife to sign by her maiden name, "A. W.," and handing them over, saying, "Here are the notes." On his trial for forging and uttering these notes, the jury found him guilty, being of opinion that, when he got his wife's signature to them, he intended to pass them as the notes of his mother-in-law:—Held, that the conviction was right, and the question which had been thus put to the jury was the correct way of leaving it to them. *Reg. v. Mahony*, 6 Cox, C. C. 487.

Inchoate Negotiable Instrument—No Drawer's Name.]—H. purchased goods upon the terms that he should give to the vendors his acceptance for the price, indorsed by a solvent third party. The vendors sent to him for such acceptance and indorsement a document in the form of a bill of exchange, for the price, but without any drawer's name thereon. H. returned this document accepted by himself, and with what purported to be an indorsement by a solvent third party. This indorsement was fictitious and had been forged by H. No drawer's name was ever placed upon the document:—Held, that the document was not a bill of exchange, as it bore no drawer's name, and that H. could not be convicted of feloniously forging or feloniously uttering an indorsement on a bill of exchange. *Reg. v. Harper*, 7 Q. B. D. 78; 50 L. J., M. C. C. 90; 44 L. T. 615; 29 W. R. 743; 14 Cox, C. C. 574.

Semble, that he might have been convicted of a common-law forgery. *Id.*

The acceptance to what purported to be a bill of exchange was forged. At the time, however, this was so forged, the document had not been signed by the drawer:—Held, that the document, not having the signature of the drawer attached to it at the time the acceptor's name was forged, was not a bill of exchange. *Reg. v. Mopsey*, 11 Cox, C. C. 143.

To constitute the forgery of a bill of exchange, the instrument must be a complete forging; an acceptance to an instrument in the form of a bill, but without the drawer's name, is not within the statute. *Reg. v. Butterwick*, 2 M. & Rob. 196.

The forging a note which, for want of a signature, was incomplete, was not within the statute which made forging notes capital. *Reg. v. Pateman*, R. & R. C. C. 455.

No Drawee's Name.]—An indictment for uttering a false bill of exchange is supported by proof of uttering an instrument in form of a bill with a forged acceptance on it, though there is no person named as drawee in the bill. *Reg. v. Hawkes*, 2 M. C. C. 60. See *Peto v. Reynolds*, 9 Ex. 410; *S. C. (in error)*, 11 Ex. 418; and *Fidler v. Marshall*, 9 C. B., N. S. 606.

— **Payable to — or Order.**—Where a prisoner was indicted for forging a bill, and the bill was payable to — or order:—Held, that there must be a payee; forging an instrument payable to — or order is not sufficient. *Reg. v. Randall*, R. & R. C. C. 195.

— **On Unstamped Paper.**—Forging on unstamped paper a bill or a note which requires a stamp, is as much an offence as if it was on stamped paper. *Reg. v. Hawkeswood*, 2 T. R. 606, n.; *S. P.*, *Reg. v. Morton*, 2 East, P. C. 955; *Reg. v. Reculist*, 2 Leach, C. C. 703; 2 East, P. C. 956.

Negotiability of, not Essential.—It was not necessary that a note should be negotiable, in order to be a note within 2 Geo. 2, c. 25, so as to be the subject of an indictment for forging or uttering it. *Reg. v. Box*, R. & R. C. C. 300; 6 Taunt. 325.

Bill made after Signature forged by another.—If the prisoner writes another's name across a blank stamp, on which, after he is gone, a third person who is in league with him, writes a bill of exchange:—Semble, that this is not a forgery of the acceptance of a bill of exchange by the prisoner. *Reg. v. Cooke*, 8 C. & P. 582.

Indorsement, when Forgery.—Discharging a genuine indorsement, and inserting another, is altering the indorsement, and forgery. *Reg. v. Birkett*, R. & R. C. C. 251.

A bill of exchange made payable to A., B., C., D., or order, executrices. The indictment charged, that the prisoner forged on the back of the bill a certain forged indorsement, which indorsement was as follows (naming one of the executrices):—Held, a forged indorsement. *Reg. v. Winterbottom*, 2 C. & K. 37; 1 Den. C. C. 41.

The forging of an indorsement in this country on a bill drawn abroad on a person in this country and payable in this country was an offence within 39 Geo. 3, c. 63. *Reg. v. Roberts*, 7 Cox, C. C. 422; 7 Ir. C. L. R. 325.

Forging a bill or a note, purporting to be payable to A. B. or order, is a complete offence, though there is no indorsement upon it in A. B.'s name. *Reg. v. Birket*, Byl. Bills, 441.

— **By Person knowing he has no Title.**—If a bill of exchange, payable to A. or order, gets into the hands of another person of the same name as the payee, and such person, knowing that he was not the real person in whose favour it was drawn, indorses it, he is guilty of a forgery. *Mead v. Young*, 4 T. R. 28.

Alteration of Amount.—Altering a bill from a lower to a higher sum is forging it; and a person might have been indicted on 7 Geo. 2, c. 22, for forging such an instrument, although the statute had the word "alter" as well as "forge." *Reg. v. Teague*, R. & R. C. C. 33; 2 East, P. C. 979.

Filling in Larger Sum than Authorized.—If a person, having the blank acceptance of another, is authorized to write on it a bill of exchange for a limited amount, and he writes a bill of exchange for a larger amount, with intent to defraud either the acceptor or any other person; this is forgery. *Reg. v. Hart*, 7 C. & P. 652; 1 M. C. C. 486.

What is or is not a false making of a bill of exchange, is a question of law. *Id.*

Alteration of Date.—A., being in want of 1,000*l.*, applied to B., who drew a bill for that amount, which A. accepted, payable at three months after date. In a few days B. came to A., and said that he could not get the 1,000*l.* bill discounted, as it was too large, and proposed that two bills for 500*l.* each should be substituted; one for 500*l.* was drawn by B., and accepted by A.: B., upon this, pretended to destroy the 1,000*l.* bill in A.'s presence, but did not in fact destroy it; on the contrary, he altered it from a bill at three, to a bill at twelve months:—Held, that this was forgery in B., with intent to defraud A. *Reg. v. Atkinson*, 7 C. & P. 669.

Drawing Bill or Note in Name of Non-existent or Fictitious Person or Firm.—If a person authorizes another to sign a note in his name, dated at a particular place, and made payable at a banker's: and the person in whose name it is drawn represents it to be the name of another person, with intent to defraud, and no such person as the note and the representation import exists, this is forgery, for it is a false making of an instrument in the name of a non-existing person. *Reg. v. Parkes*, 2 Leach, C. C. 775; 2 East, P. C. 963, 992.

A person who has for many years been known by a name which was not his own, and afterwards assumes his real name, and in that name draws a bill of exchange, is not guilty of forgery, though the bill was drawn for the purposes of fraud. *Reg. v. Aickles*, 1 Leach, C. C. 438; 2 East, P. C. 968.

Assuming and using a fictitious name, though for the purposes of concealment and fraud, will not amount to forgery, if it was not for that very fraud, or system of fraud, of which the forgery forms a part. *Reg. v. Bontien*, R. & R. C. C. 260.

Where a prisoner fraudulently used the name of another person for the purposes of his trade, and afterwards accepted a bill in that name:—Held, that he could not be convicted of forgery, unless when he first assumed the fictitious name he contemplated the making of that specific bill. *Reg. v. White*, 5 Cox, C. C. 290.

A bill drawn in fictitious names, where there are no such persons existing as the bill imports, may be a forgery. *Reg. v. Wilkes*, 2 East, P. C. 957.

It is felony to forge the name of a person, although such person never existed. *Reg. v. Bolland*, 1 Leach, C. C. 83; 2 East, P. C. 958.

Writing the acceptance of an existing person to a bill of exchange without authority, or the name of a firm or person non-existing, in acceptance of a bill, with intent to defraud, is forgery; and if a person writes an acceptance in his own name to represent a fictitious firm, with intent to defraud, it is a forged acceptance; for if an acceptance represents a fictitious firm, it is the same as if it represented a fictitious person. *Reg. v. Rogers*, 8 C. & P. 629.

If a person gets another to accept a bill in his true name, intending at the time to represent such name to be the name of another person; for the purposes of fraud, it is a forgery. *Reg. v. Mitchell*, 1 Den. C. C. 282.

A receipt indorsed on a bill of exchange in a fictitious name is a forgery, although it does not purport to be the name of any particular person.

Rea v. Taylor, 1 Leach, C. C. 215; 2 East, P. C. 690.

Signing a money order in an assumed name is forgery, if the name was assumed to defraud the person to whom such order was given, though the prisoner had borne other names unknown to the prosecutor, who knew him only by the assumed name. *Rea v. Francis*, R. & R. C. C. 209.

If, on an indictment for forging a bill of exchange it is proved that the prisoner assumed a false name for the purpose of pecuniary fraud, connected with the forgery, the drawing, accepting, or indorsing of such bill of exchange, in such false or assumed name, is forgery. *Rea v. Peacock*, R. & R. C. C. 278.

Where a name made use of by a prisoner in a forged instrument is assumed by him with the intention of defrauding the prosecutor, it is forgery, though the prisoner's real name would have carried with it as much credit as the assumed name. *Rea v. Whitley*, R. & R. C. C. 90.

Indorsing a bill in a fictitious name is a forgery, though the bill would have then been equally negotiable if indorsed by the prisoner in his own name, if the fictitious name was used in order to defraud. *Rea v. Marshall*, R. & R. C. C. 75; *S. P.*, *Rea v. Taft*, 1 Leach, C. C. 172; 2 East, P. C. 959.

Adding Address to Name of Drawer.—Putting an address to the name of a drawer of a bill of exchange while the bill is in the course of completion, with intent to make the acceptance appear to be that of a different existing person, is forgery. *Reg. v. Blenkinsop*, 2 Cox, C. C. 420; 1 Den. C. C. 276; 2 C. & K. 531; 17 L. J., M. C. 62.

Address of different Person given, though Name the same.—If there are two persons of the same name, but of different descriptions or additions, and one signs his name with the description or addition of the other for the purpose of fraud, it is forgery. *Rea v. Webb*, Bayl. Bills, 432.

Addition of False Address, but no Description.—A nurseryman and seedsman got his foreman to accept two bills, the acceptances having no addition, description, or address, and afterwards, without the acceptor's knowledge, he added to the direction a false address, but no description, and represented in one case that the acceptance was that of a customer, and in the other case that it was that of a seedsman, there being in fact no such person at the supposed false address:—Held, that in the one case (the former) he was not guilty of forgery of the acceptance, but that in the other case he was. *Reg. v. Epps*, 4 F. & F. 81.

Bill Drawn and Accepted by Person not Living at Address given.—Where a bill was drawn by the prisoner, and addressed to "Mr. T. B., Baize Manufacturer, Romford," and purported to have been accepted by him, payable when due at No. 40, Castle-street, Holborn, and it was proved that no such person resided at Romford, and that there was no baize manufactory there, and that he did not live at Castle-street; and the prisoner produced witnesses to prove that the acceptance was of the handwriting of T. B., but that he had never carried on the business of a baize manufacturer at Romford, nor resided at Castle-street:—

Held, that, although this was a case of gross fraud, it did not amount to forgery, as the acceptance was written by a person of the name of T. B. *Rea v. Webb*, 6 Moore, 447, n.; 3 B. & B. 228; R. & R. C. C. 405.

Under Presumption or Assumption of Authority.—If A. puts the name of B. on a bill of exchange as acceptor, without B.'s authority, expecting to be able to meet it when due, or expecting that B. will overlook it; this is forgery. But if A. either had authority from B., or from the course of their dealings, *bonâ fide* considered that he had such authority, it is not forgery. *Rea v. Forbes*, 7 C. & P. 224; *S. P.*, *Reg. v. Parish*, 8 C. & P. 94.

The fact that on three or four previous occasions, when he had drawn bills in that way, the party whose name was used had paid them, even without remark or remonstrance, would afford fair ground for the belief that he had such authority. *Reg. v. Beard*, 8 C. & P. 143.

If a person, wishing to raise money, puts the name of another on a bill without his authority, intending to pay the bill when due, and believing that he should be able to do so; this is forgery. *Id.*

So, if a person, relying on the kindness of another (a near relation for instance), uses his name on a bill without authority, trusting that the person will pay it, rather than there should be a criminal prosecution on the subject; this also is a forgery. *Id.*

If a person knows the acceptance of a bill of exchange to be forged, and uttered it as true, and believed that his bankers, to whom he uttered it, would advance money on it, which they would not otherwise, that is ample evidence of an intent to defraud, and evidence upon which a jury ought to act: and a person is not the less guilty of forgery because he may intend ultimately to take up the forged bill, and may suppose that the party whose name is forged will be no loser; and the fact that the bill has been since paid by the forger will make no difference, if the offence was complete at the time of the uttering. *Reg. v. Geach*, 9 C. & P. 499.

By Procuration.—By 24 & 25 Vict. c. 98, s. 24, *whosoever, with intent to defraud, shall draw, make, sign, accept or indorse any bill of exchange or promissory note, by procuration or otherwise, for, in the name, or on the account of any other person, without lawful authority or excuse, or shall offer, utter, dispose of, or put off, any such bill or note so drawn, made, signed, accepted, or indorsed, by procuration or otherwise, without lawful authority or excuse as aforesaid, knowing the same to have been so drawn, made, signed, accepted, or indorsed as aforesaid, shall be guilty of felony.*

— **Before this Enactment.**—A prisoner falsely averring an authority to indorse a bill of exchange for T. Tomlinson, wrote on the back of the bill, "Per procuration Thomas Tomlinson, Emanuel White." The bill was thereupon discounted, and the prisoner went off with the money:—Held, no forgery. *Reg. v. White*, 1 Den. C. C. 208; 2 C. & K. 404; 2 Cox, C. C. 210.

ii. *Indictment.*

Form and Validity of.—A count charging a

prisoner with uttering a forged bill, with intent to defraud A., and setting out the bill with the acceptance upon it, is not supported by proving that the prisoner uttered the bill, and that the acceptance on it was a forgery. *Rea v. Horwell*, 6 C. & P. 148; 1 M. C. C. 405.

In an indictment for forgery, a count which, since 11 Geo. 4 & 1 Will. 4, c. 66, charged, that the prisoner "did falsely make, forge and counterfeit, and did cause and procure to be falsely made, forged and counterfeited, and did willingly act and assist in the false making, forging and counterfeiting" a bill of exchange, was good; as were counts charging that he did utter and publish as true, and did after dispose of and put away the bill. *Rea v. Brewer*, 6 C. & P. 363.

An indictment on 2 Geo. 2, c. 25, charging that the prisoner feloniously altered a bill by making, forging and adding a cipher, was good, though the words of the statute were, "if any person shall falsely make or forge, counterfeit," &c. *Rea v. Elsworth*, 2 East, P. C. 986.

Intent to Defraud.]—A forged bill of exchange, given in payment to one of two known partners, may be laid to be forged with intent to defraud that one, the partnership dealing having been conducted by him only. *Reg. v. Hanson*, 2 M. C. C. 245; Car. & M. 334.

Purport and Tenor Repugnant.]—An indictment for forging a bill of exchange directed to Ransom, Moreland and Hammersley, stating that it purported to be directed to George Lord Kinnaird, William Moreland and Thomas Hammersley, by the names and description of Ransom, Moreland and Hammersley, is bad; for the purport and tenor are repugnant. *Rea v. Gilchrist*, 2 Leach, C. C. 657; 2 East, P. C. 982.

"Purporting,"]—An indictment, charging that the defendant, having in his possession a bill of exchange, purporting to be directed to one J. King, by the name and description of J. Ring, forged the acceptance of the said J. King, is bad, because the word "purport" means what appears on the face of the instrument, and the bill did not purport to be drawn on J. King. *Rea v. Reading*, 1 East, 180, n.

An indictment for forging a bill of exchange, stating it to be signed by H. H. instead of purporting only to be so signed, the signature itself being a forgery, is bad. *Rea v. Carter*, 2 East, P. C. 985.

Attestation after Prisoner's Signature.]—An indictment stating the tenor of a note is sustained by proof that the attestation of the witness, and the words "M. W., her mark," were added after the prisoner's signature, though on the same occasion. *Rea v. Dunn*, 2 East, P. C. 976.

Date not Stated.]—In an indictment for forging a promissory note, the forged note might, under 2 & 3 Will. 4, c. 123, s. 3, be described as "a certain forged promissory note, for the payment of 29l.," without stating the date. *Rea v. Burgess*, 7 C. & P. 490.

On Foreign Notes or Bills.]—An indictment for uttering a forged bill of exchange set out as follows:—"à 4 mois de date par cette lettre de change, à l'ordre de nous-même la somme de

500 livres sterling,"—and translated,—“at four months' date by this bill of exchange, to the order of ourselves, the sum of five hundred pounds sterling,” is good. *Rea v. Szudurskie*, 1 M. C. C. 429.

— Translation Necessary.]—Where a prisoner was convicted of forging an instrument (purporting to be a Prussian note) in a foreign language, but no count in the indictment contained an English translation of the note: judgment was ordered to be arrested. *Rea v. Goldstein*, 7 Moore, 1; 10 Price, 88; 3 B. & B. 201; R. & R. C. C. 473.

Foreign notes were set out in an indictment in the original language, but the translation omitted some words which were in the margin or a border round the body of the note, and denoted the year in which the notes were issued, and it appeared that without these words the notes would not be capable of being circulated in the country to which they belonged:—Held, that the translation was imperfect. *Rea v. Harris*, 7 C. & P. 429.

Describing a foreign note wholly in the English language is not sufficient in an indictment for forgery, notwithstanding the 2 & 3 Will. 4, c. 123, s. 3; but this objection, provided the description was in the words of the statute creating the offence, could only be taken advantage of by demurrer. *Id.*

An indictment under 11 Geo. 4 & 1 Will. 4, c. 66, s. 19, for feloniously having in possession plates upon which were engraved a promissory note for payment of money of a foreign prince inaccurately setting out the note in the foreign language and the translation, and with facsimiles of the note not ingrossed in the indictment, but attached thereto on paper, was bad. *Rea v. Warshaner*, 1 M. C. C. 466.

Setting out Notes.]—Sewing to the parchment on which the indictment is written impressions of forged notes taken from engraved plates, is not a legal mode of setting out the notes in the indictment. *Rea v. Harris*, 7 C. & P. 429.

Allegation that it is Payable in England.]—An indictment under 11 Geo. 4 & 1 Will. 4, c. 66, for uttering a forged foreign promissory note, need not allege it to be payable in England. *Reg. v. Lee*, 2 M. & Rob. 281.

Aider by Verdict.]—Counts under 2 & 3 Will. 4, c. 123, s. 3, stating the plates to have engraved on them, in the Polish language, a promissory note for payment of money, to wit, for the payment of five florins, purporting to be a promissory note for payment of money of a certain foreign prince, without stating the value, were good after verdict. *Rea v. Warshaner*, 1 M. C. C. 466.

Describing a foreign note wholly in the English language is not sufficient, but this objection is cured after verdict by 7 Geo. 4, c. 64, s. 21, if the description was in the words of the statute creating the offence. *Rea v. Harris*, 7 C. & P. 429.

iii. Evidence.

To Shew that Prisoner thought he had Authority.]—A letter which had passed through the

post-office before an alleged forgery, is admissible for the prisoner, in order to shew that he supposed he had a right to cause a name to be signed. *Reg. v. Clifford*, 2 C. & K. 202.

A letter from the prisoner to the prosecutor left unanswered is sufficient to warrant the jury in presuming a bona fide belief in an implied authority. *Reg. v. Beardsall*, 1 F. & F. 629.

On an indictment for forging and uttering a bill, knowing it to be forged, it appearing that the person whose name was used was informed of it at the time, and did not repudiate it; the jury was directed to acquit, though he was called as a witness, and denied any previous authority. *Reg. v. Smith*, 3 F. & F. 504.

To Negative Express or Implied Authority.]

—Proof that a prisoner on uttering a note represented the maker as living at a particular place, and in a particular line of business, the evidence that it is not that person's note is sufficient to prove it a forgery, especially if the prisoner is the payee of the note; and proof that there is another person of the name in a different line of business will not make it necessary for the prosecutor to shew that it was not that person's note. *Reg. v. Hampton*, 1 M. C. C. 255.

Where a bill purported to be accepted by "Samuel Knight, Market-place, Birmingham:"—Held, on an indictment for the forgery of the acceptance, that the result of inquiries made at Birmingham by the prosecutor, who was not acquainted with the place, was evidence for the jury, though neither the best nor the usual evidence given to prove the non-existence of a party whose name is used. *Reg. v. King*, 5 C. & P. 123.

The prisoners were indicted for forging a bill of exchange. The bill purported to be accepted by one George Smith, and was directed to George Smith, draper, Birmingham. The direction was in the handwriting of the prisoner, White, but the acceptance was not. George Smith, a draper, at Birmingham, proved that the acceptance was not his; that he had made personal inquiries, and consulted a directory, and could not discover that there was any other George Smith, a draper, at Birmingham. Letters were produced from White to Davis, in which the former requested the latter to get him blank bills, signed by men of straw:—Held, first, that there was evidence to go to the jury that the George Smith who was called was the only draper of that name in Birmingham; and, secondly, that there was evidence for the jury that the name, George Smith, in the acceptance was fictitious, and that the acceptance was not the genuine acceptance of a man of straw signing his real name. *Reg. v. White*, 2 F. & F. 554.

On an indictment for uttering a forged cheque, it is sufficient to disprove the handwriting of the supposed maker; and he need not be called to disprove an authority to others to use his name; circumstances shewing guilty knowledge are enough. *Reg. v. Hurley*, 2 M. & Rob. 473.

Proof of Acceptance.—If a bill purporting to be accepted by J. K. is shewn to him, and he declares it to be a good bill, that is a sufficient proof that he wrote the acceptance. *Reg. v. Hevey*, 1 Leach, C. C. 232.

c. Cheques.

[See and compare cases under preceding sub-head.]

Statute.—By 24 & 25 Vict. c. 98, s. 25, *whenever any cheque or draft on any banker shall be crossed with the name of a banker, or with two transverse lines with the words "and company," or any abbreviation thereof, whosoever shall obliterate, add to, or alter any such crossing, or shall offer, utter, dispose of, or put off any cheque or draft whereon any such obliteration, addition, or alteration has been made, knowing the same to have been made, with intent, in any of the cases aforesaid, to defraud, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.* (Previous enactment, 21 & 22 Vict. c. 79, s. 3.)

What is a Cheque.—A forged draft on a banker was an order for the payment of money within 7 Geo. 2, c. 22, although the person whose name was forged never kept cash with, or was known to, the banker. *Reg. v. Lockett*, 1 Leach, C. C. 94; 2 East, P. C. 940.

A cheque in which the order of the words is transposed (e. g., to "pay A. B. seventeen or bearer pounds") is still a cheque, and an order for the payment of money, for the forgery of which an indictment will lie. *Reg. v. Boreham*, 2 Cox, C. C. 189.

—**Incomplete Instrument.**—The practice was for a majority of the officers of a parish to draw cheques on the treasurer of a union; and one of their blank cheques, filled up for 1*l.* 3*s.* 6*d.*, had a note at the bottom—"Unless this cheque is signed by a majority of the parish officers, it will not be cashed." This cheque was signed by one of the officers while it was for 1*l.* 3*s.* 6*d.*; it was altered to 3*l.* 3*s.* 6*d.*, and when cashed by the treasurer had the signatures of a majority of the officers to it:—Held, that if the cheque was fraudulently altered when it had only one signature to it, this was no forgery, as it was then an incomplete instrument. *Reg. v. Turpin*, 2 C. & K. 820.

Forged Indorsement of valid Cheque.—Forging and uttering an indorsement on a cheque, with a view to get it cashed by the credit of the name, will support a conviction for forgery, although the cheque is valid. *Reg. v. Wardell*, 3 F. & F. 82.

Alteration after Cheque Cashd.—The drawer of a cheque on a bank which was duly honoured, and returned to him by the bank, afterwards altered his signature in order to give it the appearance of forgery, and to defraud the bank and cause the payee of the cheque to be charged with forgery:—Held, that this alteration did not constitute a forgery. *Brittain v. Bank of London*, 3 F. & F. 465; 8 L. T. 382; 11 W. R. 569. *But see* 2 Russ. C. & M. 719.

Filling in larger Amount than Authorized.—Where a party receives a blank cheque, signed

with directions to fill in a certain amount, and he fraudulently fills in a larger amount, and devotes the proceeds of the cheque to other purposes, he is guilty of forgery. *Reg. v. Wilson*, 2 Cox, C. C. 426; 1 Den. C. C. 284; 17 L. J., M. C. 82; 2 C. & K. 527.

A. gave to B., his clerk, a blank cheque, and directed him to fill it up with the amount of a bill of exchange, and expenses (for which A. had to provide, and which amount B. was to ascertain), and get the cheque cashed, and pay the amount to Mr. W., and take up the bill. The bill was for 156l. 9s. 9d., the expenses about 10s. B. filled up the cheque with the sum of 250l., got it cashed, and kept the whole amount, alleging that it was due to him for salary.—Held, that this was forgery, and that this was so even if B. bona fide believed that the sum of 250l. was due to him from A., or even if it was really due to him. *Id.*

So filling in a form of cheque already signed, with blanks left in it for the sum, without authority, is a forgery. *Flower v. Shaw*, 2 C. & K. 703.

Cheque signed in Fictitious Name.]—The prisoner Robert Martin, in payment for a pony and cart purchased by him from the prosecutor, drew a cheque in the name of William Martin in the presence of the prosecutor upon a bank at which he, the prisoner, had no account, and gave it to the prosecutor as his own cheque drawn in his own name. At the time he drew the cheque the prisoner knew that it would be, as in fact it was, dishonoured. The prosecutor received the cheque in the belief that it was drawn in the prisoner's own name:—Held, that the prisoner was not guilty of the offence of forgery. The resolution in *Dunn's case* (1 Lea. C. C. 59): "In all forgeries the instrument supposed to be forged must be a false instrument itself; and if a person give a note entirely as his own, his subscribing it by a fictitious name will not make it a forgery, the credit there being wholly given to himself, without any regard to the name, or any relation to a third person," followed and approved. *Reg. v. Martin*, 5 Q. B. D. 34; 14 Cox, C. C. 375; 49 L. J., M. C. 11; 41 L. T. 531; 28 W. R. 232; 44 J. P. 74.

Evidence to go to Jury that Drawer a Fictitious Person.]—On an indictment for forging a cheque purporting to be drawn by G. A. upon Messrs. J. L. & Co., proof that no person named G. A. keeps an account with or has any right to draw on Messrs. J. L. & Co., is *prima facie* evidence that G. A. is a fictitious person. *Re v. Backler*, 5 C. & P. 118.

Upon an indictment for the forgery of a cheque, dated Knighton, and purporting to be drawn by John Hust, it was proved that no John Hust lived at Knighton who would be likely to keep an account with a banker:—Held, evidence to go to the jury that John Hust was a fictitious person. *Reg. v. Ashby*, 2 F. & F. 560.

Evidence of Intent to Defraud—Presentment.]—A forged cheque on the W. bank was presented for payment at the S. bank, where the supposed drawer never kept cash:—Held, that this was sufficient evidence of an intent to defraud the partners of the bank, although there was no probability of their paying the cheque, even if it had been genuine. *Re v. Crowther*, 5 C. & P. 316.

d. Documents Purporting to be made Abroad.

Statute.]—By 24 & 25 Vict. c. 98, s. 40, *where the forging or altering any writing or matter whatsoever, or the offering, uttering, disposing of, or putting off any writing or matter whatsoever, knowing the same to be forged or altered, is in this act expressed to be an offence, if any person shall, in England or Ireland, forge or alter, or offer, utter, dispose of, or put off, knowing the same to be forged or altered, any such writing or matter, in whatever place or country out of England and Ireland, whether under the dominion of her Majesty or not, such writing or matter may purport to be made or may have been made, and in whatever language the same or any part thereof may be expressed, every such person, and every person aiding, abetting, or counselling such person, shall be deemed to be an offender within the meaning of this act, and shall be punishable thereby in the same manner as if the writing or matter had purported to be made or had been made in England or Ireland; and if any person shall in England or Ireland forge or alter, or offer, utter, dispose of, or put off, knowing the same to be forged or altered, any bill of exchange, or any promissory note for the payment of money, or any indorsement on or assignment of any bill of exchange or promissory note for the payment of money, or any acceptance of any bill of exchange, or any undertaking, warrant, order, authority, or request for the payment of money, or for the delivery or transfer of any goods or security, or any deed, bond, or writing obligatory for the payment of money (whether such deed, bond, or writing obligatory shall be made only for the payment of money, or for the payment of money together with some other purpose), or any indorsement on or assignment of any such undertaking, warrant, order, authority, request, deed, bond, or writing obligatory, in whatsoever place or country out of England and Ireland, whether under the dominion of her Majesty or not, the money payable or secured by such bill, note, undertaking, warrant, order, authority, request, deed, bond, or writing obligatory may be or may purport to be payable, and in whatever language the same, or any part thereof, may be expressed, and whether such bill, note, undertaking, warrant, order, authority, or request be or be not under seal, every such person, and every person aiding, abetting, or counselling such person, shall be deemed to be an offender within the meaning of this act, and shall be punishable thereby in the same manner as if the money had been payable, or had purported to be payable, in England or Ireland.* (Similar to 11 Geo. 4 & 1 Will. 4, c. 66, s. 30.)

Uttering in England—Circulated Abroad.]—On an indictment for forging and uttering a cheque or an order for the payment of money, it appearing that the cheque was dated as if drawn abroad; but there being evidence, by comparison of handwriting, that it was drawn abroad, and also evidence that he caused it to be presented to a banker abroad, through whom it was presented in this country without a stamp:—Held, that the prisoner might be convicted of uttering it in this country, if he set it in circulation abroad. *Reg. v. Taylor*, 4 F. & F. 511.

e. Court Rolls.

Statute.—By 24 & 25 Vict. c. 98, s. 30, *whoever shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any court roll, or copy of any court roll, relating to any copyhold or customary estate, with intent to defraud, shall be guilty of felony.*

f. Debentures.

Statute.—By 24 & 25 Vict. c. 98, s. 26, *whoever shall fraudulently forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or fraudulently altered, any debenture issued under any lawful authority whatsoever, either within her Majesty's dominions or elsewhere, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years, and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.*

g. Deeds or Bonds.

Statute.—By 24 & 25 Vict. c. 98, s. 20, *whoever, with intent to defraud, shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any deed, or any bond or writing obligatory, or any assignment at law or in equity of any such bond or writing obligatory, or shall forge any name, handwriting, or signature purporting to be the name, handwriting, or signature of a witness attesting the execution of any deed, bond, or writing obligatory, or shall offer, utter, dispose of, or put off any deed, bond or writing obligatory having thereon any such forged name, handwriting, or signature, knowing the same to be forged, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (Former provision, 11 Geo. 4 & 1 Will. 4, c. 66, s. 10.)*

Bond—What is.]—On an indictment for forgery of an administration bond on administration granted of the effects of S., it was objected, that 22 & 23 Car. 2, c. 10, requiring the bond to be given by the party to whom administration was granted, and not by the party that was entitled to administration, no forgery was made out; but the bond was a good bond within the statute, having been given by the party to whom, in fact, administration was granted:—Held, that this was not a good objection. *Reg. v. Barber*, 1 C. & K. 434.

Deed—What is.]—A power of attorney to transfer government stock, signed, sealed and delivered, was a deed within 2 Geo. 2, c. 25, s. 1. *Reg. v. Fauntleroy*, 1 M. C. C. 52; 2 Bing. 413; 10 Moore 1; 1 C. & P. 421; *S. P.*, *Reg. v. Pringle*, 1 M. C. C. 68. *See now* 24 & 25 Vict. c. 98, ss. 2, 4, *post*, col. 255.

— Forgery of—Particular Statutory Provisions as to Form.]—Forging a deed was within 2 Geo. 2, c. 25, s. 1, although there may have been subsequent directory provisions by other statutes, that instruments for the same purpose as such forged deed shall be in a particular form, or shall comply with certain requisites, and the forged deed was not in that form, and did not comply with those requisites; for the directory provisions do not make the deed (although out of the form prescribed, and without the requisites) wholly void. *New v. Lyon*, R. & R. C. C. 255.

— Fraudulent Mortgage by one Executor.]

—A son who was heir-at-law to his father, who was one of the executors and trustees of his father's will, though he had not proved the will, and whose christian names and description were identical with those of his father, after his father's death, executed mortgages of freehold and leasehold property of the father and applied the mortgage money to his own purposes. He handed over the title deeds to the mortgagees. The transaction took place without the knowledge of his mother and sister, who were co-trustees and co-executrices with him, and who had proved the will. The mortgage deeds purported to be executed by the absolute owner of the property, and the solicitor who acted for both parties believed the son to be the absolute owner. The son told him nothing about the father's will. The son took a beneficial interest under the trusts of the father's will. *Semble*, per Lindley, L. J.:—The son could have been convicted of forgery by reason of his executing the mortgage deeds. *Cooper, In re, Cooper v. Vesey*, 20 Ch. D. 611; 47 L. T. 89; 30 W. R. 648—C. A. Affirming 51 L. J., Ch. 149; 45 L. T. 532; 30 W. R. 148.

Antedating Deed with Intent to Defraud.]

A deed really executed by the parties between whom it purports to be made, but antedated with intent fraudulently to defeat a prior deed, is a forgery. *Reg. v. Ritson*, 1 L. R., C. C. 200; 39 L. J., M. C. 10; 21 L. T. 437; 18 W. R. 73; 11 Cox, C. C. 352.

A. by deed, bearing date on the 7th of May, 1868, conveyed on that day certain lands to B., in fee. Subsequently, on the 26th of April, 1869, C. produced a deed, bearing date the 12th of March, 1868, purporting to be a demise of the same land for a long term of years, as from the 25th of March, 1868, from A. to C. The alleged lease was executed after A.'s conveyance to B., and ante-dated for the purpose of defrauding B.:—Held, that A. and C. were guilty of forgery. *Id.*

Forging Letters of Orders issued by Bishop.]

—The forging of letters of orders issued by a bishop, certifying that on a day and at a place mentioned therein, A. B. was admitted into the holy order of deacons, according to the manner prescribed by the Church of England, and rightly and canonically ordained deacon, in testimony whereof the bishop had caused his episcopal seal to be affixed thereunto, is not the feloniously forging of a deed within the 24 & 25 Vict. c. 98, s. 20, although such forgery is a misdemeanor at common law. *Reg. v. Morton*, 2 L. R., C. C. 22; 42 L. J., M. C. 58; 28 L. T. 452; 21 W. R. 629.

Indictment — Superfluous Description.]—A superfluous description of the instrument forged is not material. Therefore an indictment for forging a bond, laying it to be "a bond and writing obligatory," was good upon 2 Geo. 2, c. 25, though both terms were used in the statute; and a bond is a writing obligatory, though the converse does not hold generally. *Reg. v. Dunnett*, 2 East, P. C. 985; 2 Leach, C. C. 581.

— Intent to Defraud avowed generally.]—Since 14 & 15 Vict. c. 100, s. 8, it is sufficient, upon an indictment for forgery and uttering a bond, to lay the intent generally to defraud, and the prisoner may be convicted, though it does not appear that he had any intention ultimately to defraud the party whose signature he had forged, he having defrauded the party to whom he uttered the instrument. *Reg. v. Trenfield*, 1 F. & F. 43.

— Deed need not be set out Verbatim.]—A count for uttering a forged deed describing it as "a certain deed purporting to be made on the 1st day of March, 1837, between R. W. of the one part, and D. G. of the other part, purporting to be an under lease by the said R. W. to the said D. G. of certain lands, tenements and premises therein mentioned, subject to the payment of the yearly rent of 8*l.*, payable on the first day of March in every year, and purporting to contain a covenant by the said D. G. with the said R. W. for the payment by the said D. G. to the said R. W. of the yearly rent of 8*l.*," is good, under 2 & 3 Will. 4, c. 123, s. 3. *Reg. v. Davies*, 9 C. & P. 427; 2 M. C. C. 177.

A count for forging or uttering a deed, purporting to be a lease of certain premises, described shortly, is good, without setting it out verbatim. *Id.*

The instrument forged may be described as a deed, without setting it out, or averring facts to shew that it was such a deed as might be the subject of larceny. *Reg. v. Collins*, 2 M. & Rob. 461.

h. Evidence, Instruments of.

Statute.]—By 24 & 25 Vict. c. 98, s. 29, *whoever shall forge or fraudulently alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or fraudulently altered, any instrument, whether written or printed, or partly written and partly printed, which is or shall be made evidence by any act passed or to be passed, and for which offence no punishment is herein provided, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years, and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.*

Indictment.]—An indictment stating that the prisoner forged a certain paper instrument, partly printed and partly written, in the words and figures following, that is to say, &c., was bad in form, as it did not state what the instrument was in respect of which the forgery was committed, nor how the party signing it had authority to sign it. *Reg. v. Wilcox*, R. & R. C. C. 50.

i. Exchequer Bills or Bonds.

Altering, Uttering, or Putting-off.]—By 24 & 25 Vict. c. 98, s. 8, *whosoever shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any Exchequer bill or Exchequer bond or Exchequer debenture, or any indorsement on or assignment of any Exchequer bill or Exchequer bond or Exchequer debenture, or any receipt or certificate for interest accruing thereon, with intent to defraud, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.*

Making or Having in Possession Instruments for Making.]—By s. 9, *whosoever without lawful authority or excuse (the proof whereof shall lie on the party accused), shall make, or cause or procure to be made, or shall aid or assist in making, or shall knowingly have in his custody or possession, any frame, mould, or instrument having therein any words, letters, figures, marks, lines, or devices peculiar to and appearing in the substance of any paper provided or to be provided or used for Exchequer bills or Exchequer bonds or Exchequer debentures, or any machinery for working any threads into the substance of any paper, or any such thread, and intended to imitate such words, letters, figures, marks, lines, threads, or devices, or any plate peculiarly employed for printing such Exchequer bills, bonds, or debentures, or any die or seal peculiarly used for preparing any such plate, or for sealing such Exchequer bills, bonds, or debentures, or any plate, die, or seal intended to imitate any such plate, die, or seal as aforesaid, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years, and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.*

Making Paper for Purpose of Forging.]—By s. 10, *whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall make, or cause or procure to be made, or aid or assist in making, any paper in the substance of which shall appear any words, letters, figures, marks, lines, threads, or other devices peculiar to and appearing in the substance of any paper provided or to be provided or used for such Exchequer bills, bonds, or debentures, or any part of such words, letters, figures, marks, lines, threads, or other devices, and intended to imitate the same, or shall knowingly have in his custody or possession any paper whatsoever in the substance whereof shall appear any such words, letters, figures, marks, lines, threads, or devices as aforesaid, or any parts of such words, letters, figures, marks, lines, threads, or other devices, and intended to imitate the same, or shall cause or assist in causing any such words, letters, figures, marks, lines, threads, or devices as aforesaid, or any part of such words, letters, figures, marks, lines, threads, or*

other devices, and intended to imitate the same, to appear in the substance of any paper whatever, or shall take or assist in taking any impression of any such plate, die, or seal as in the last preceding section mentioned, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years, and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Purchasing and Having in Possession Paper.]

—By s. 11, whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall purchase or receive, or knowingly have in his custody or possession, any paper manufactured and provided by or under the directions of the Commissioners of Inland Revenue or Commissioners of her Majesty's Treasury, for the purpose of being used as Exchequer bills or Exchequer bonds or Exchequer debentures, before such paper shall have been duly stamped, signed, and issued for public use, or any such plate, die, or seal as in the last two preceding sections mentioned, shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding three years, with or without hard labour.

j. India Bonds, Stock, or Certificates.

Statutes.]—By 24 & 25 Vict. c. 98, s. 7, whosoever shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any bond, commonly called an East India bond, or any bond, debenture, or security issued or made under the authority of any act passed or to be passed relating to the East Indies, or any indorsement on or assignment of any such bond, debenture, or security, with intent to defraud, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

25 & 26 Vict. c. 7, s. 14, makes it felony to forge or utter certificates of India stock, transferable at the Bank of England or of Ireland.

By 26 & 27 Vict. c. 73, s. 13, forging India stock certificates or coupons is a felony.

By s. 14, the personation of owners of India stock certificates or coupons is a felony.

By s. 15, engraving upon plates of India stock certificates or coupons is a felony.

k. Marriage Licences or Certificates.

Statute.]—By 24 & 25 Vict. c. 98, s. 35, whosoever shall forge or fraudulently alter any licence of or certificate for marriage, or shall offer, utter, dispose of, or put off any such licence or certificate, knowing the same to be forged or fraudulently altered, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years, and

not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (Former provision, 11 Geo. 4 & 1 Will. 4, c. 66, s. 20.)

Uttering.]—If A. gives to B. a forged certificate of a pretended marriage between himself and B., in order that B. may give it to a third party, A. is not guilty of an uttering. *Reg. v. Heywood*, 2 C. & K. 352.

1. Orders and Proceedings of Magistrates.

Statute.]—By 24 & 25 Vict. c. 98, s. 32, whosoever, with intent to defraud, shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any summons, conviction, order, or warrant of any justice of the peace, or any recognizance purporting to have been entered into before any justice of the peace, or other officer authorized to take the same, or any examination, deposition, affidavit, affirmation, or solemn declaration, taken or made before any justice of the peace, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for the term of five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Forging Order not in accordance with Statutory Provisions.]—Forging a magistrate's order to pay money under hand only was not a capital offence, as the 17 Geo. 2, c. 5, under which the magistrate had power to make it, required it to be under hand and seal. *Rea v. Rushworth*, R. & R. C. C. 317; 1 Stark. 396.

And so, if it was addressed to the treasurer of the county, instead of the high constable, the magistrate having no power by the act to make it upon the former. *Id.*

The 7 Geo. 2, c. 22, was not confined to commercial transactions, but would have applied to an order made by a justice to a high constable or treasurer to pay a reward. *Rea v. Graham*, 2 East, P. C. 945.

Signature—No such Magistrate in County.]

—An order was made under 48 Geo. 3, c. 75, s. 6, purporting on the face of it to be an order of a magistrate on the treasurer of a county, to allow one J. C. the expenses of burying a dead body cast on shore:—Held, that this was a forgery, although there was no such magistrate in the county of the name of the person who signed the order, and although J. C. was not therein stated to be a parish officer, or that the expenses incurred were necessary. *Rea v. Froud*, 3 Moore, 645; 7 Price, 609; 1 B. & B. 300; R. & R. C. C. 389.

Order to Gaoler to discharge Prisoner.]—Forging an order from a magistrate to a gaoler to discharge a prisoner as upon bail having been given, is forgery at common law. *Rea v. Harris*, 1 M. C. C. 393; 6 C. & P. 129.

m. Records, Judicial and Curial Process.

Statute.]—By 24 & 25 Vict. c. 98, s. 27, who-

soever shall forge or fraudulently alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or fraudulently altered, any record, writ, return, panel, process, rule, order, warrant, interrogatory, deposition, affidavit, affirmation, recognizance, cognovit actionem, or warrant of attorney, or any original document whatsoever, of or belonging to any court of record, or any bill, petition, process, notice, rule, answer, pleading, interrogatory, deposition, affidavit, affirmation, report, order, or decree, or any original document whatsoever, of or belonging to any court of equity or court of admiralty in England or Ireland, or any document or writing, or any copy of any document or writing, used or intended to be used as evidence in any court in this section mentioned, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years, and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

By Clerk of Court or Officer.—By s. 28, whosoever, being the clerk of any court, or other officer having the custody of the records of any court, or being the deputy of any such clerk or officer, shall utter any false copy or certificate of any record, knowing the same to be false; and whosoever, other than such clerk, officer or deputy, shall certify any copy or certificate of any record as such clerk, officer, or deputy; and whosoever shall forge or fraudulently alter, or offer, utter, dispose of, or put off, knowing the same to be forged or fraudulently altered, any copy or certificate of any record, or shall offer, utter, dispose of, or put off any copy or certificate of any record having thereon any false or forged name, handwriting, or signature, knowing the same to be false or forged; and whosoever shall forge the seal of any court of record, or shall forge or fraudulently alter any process of any court other than such courts as in the last preceding section mentioned, or shall serve or enforce any forged process of any court whatsoever, knowing the same to be forged, or shall deliver or cause to be delivered to any person any paper falsely purporting to be any such process, or a copy thereof, or to be any judgment, decree, or order of any court of law or equity, or a copy thereof, knowing the same to be false, or shall act or profess to act under any such false process knowing the same to be false, shall be guilty of felony. (Punishment as in preceding section.)

Where Process a Nullity.—One who was committed to gaol under an attachment for a contempt in a civil cause, counterfeited a pretended discharge, as from his creditor to the sheriff and gaoler, under which he obtained his discharge:—Held, a misdemeanor at common law, although the attachment not being for non-payment of money, the order was in itself a mere nullity, and no warrant to the sheriff for his discharge. *Rea v. Faucett*, 2 East, P. C. 862.

Process issued in Blank.—The practice of issuing (ancient common law) county court process in blank, for the attorneys to fill up

after they had been issued by the county clerk, was highly irregular. And semble, that the filling up of a county court summons, or altering a distringas into a summons, after it had been so issued in blank, was a forgery at common law. *Rea v. Collier*, 5 C. & P. 160.

Acting or Professing to Act under Pretence of Process.—The prisoner had obtained a blank form used in a county court for the plaintiff to fill in particulars as instructions for issuing summonses; this he filled up and signed it, without any authority, "W. G., registrar of the Taunton Court." On the back of the form he wrote, "Unless the whole amount claimed by A. R., draper, of T., is paid on Saturday, an execution warrant will be immediately issued against you. Witness my signature, W. G." The prisoner sent the form thus filled up to a person who was indebted to him:—Held, that this was acting, or professing to act, under the false colour or pretence of the process of the County Court, within 9 & 10 Vict. c. 95, s. 57. *Reg. v. Richmond*, Bell, C. C. 142; 8 Cox, C. C. 200; 28 L. J., M. C. 188; 5 Jur., N. S. 521; 32 L. T., O. S. 139; 7 W. R. 417.

But the 9 & 10 Vict. c. 95, s. 57, does not apply to mere false representations or assertion of authority to receive a debt. *Reg. v. Myott*, 6 Cox, C. C. 406.

Existence of, Unnecessary.—To constitute the offence of acting, or professing to act, under false colour or pretence of the process of the county court, it is not necessary that there should be any actual process in existence, or anything on the face of it purporting to be such. *Reg. v. Evans, Dears. & B. C. C. 236*; 7 Cox, C. C. 293; 26 L. J., M. C. 92; 3 Jur., N. S. 594.

What is—Notice to Produce.—A notice to produce, given in a pretended cause in a county court, is not process of the court within 9 & 10 Vict. c. 95, s. 57. *Reg. v. Castle, Dears. & B. C. C. 363*; 7 Cox, C. C. 375; 27 L. J., M. C. 70; 3 Jur., N. S. 1308.

Indictment.—The 24 & 25 Vict. c. 98, s. 28, enacts that whosoever shall forge or fraudulently alter any process of any court (with certain exceptions), shall be guilty of felony:—Held, that an indictment for forgery under that section must allege an intent to defraud. *Reg. v. Powner*, 12 Cox, C. C. 235.

Accountant-General and other Officers' Names.]

—By 24 & 25 Vict. c. 98, s. 33, whosoever, with intent to defraud, shall forge or alter any certificate, report, entry, indorsement, declaration of trust, note, direction, authority, instrument, or writing made or purporting to be made by the accountant-general, or any other officer of the Court of Chancery in England or Ireland, or by any judge or officer of the Landed Estates Court in Ireland, or by any officer of any court in England or Ireland, or by any cashier or other officer or clerk of the Bank of England or Ireland, or the name, handwriting, or signature of any such accountant-general, judge, cashier, officer, or clerk as aforesaid, or shall offer, utter, dispose of, or put off any such certificate, report, entry, indorsement, declaration of trust, note, direction, authority, instrument, or

writing, knowing the same to be forged or altered, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years, and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (Former provision, 12 Geo. 1, c. 32, s. 9.)

When a Forgery.]—Forging a paper writing, purporting to be an office copy of a report of the accountant-general's, of money being paid into the bank, and also an office copy of a certificate of one of the cashiers of the bank, was within 12 Geo. 1, c. 32, s. 9. *Reg. v. Gibson*, 1 Leach, C. C. 61; 2 East, P. C. 899.

n. Registers of Births, Marriages and Deaths.

Destroying or injuring Register.]—By 24 & 25 Vict. c. 98, s. 36, whosoever shall unlawfully destroy, deface or injure, or cause or permit to be destroyed, defaced or injured, any register of births, baptisms, marriages, deaths or burials which now is or hereafter shall be by law authorized or required to be kept in England or Ireland, or any part of any such register, or any certified copy of any such register, or any part thereof, or shall forge or fraudulently alter in any such register any entry relating to any birth, baptism, marriage, death or burial, or any part of any such register, or any certified copy of such register, or of any part thereof, or shall knowingly and unlawfully insert or cause or permit to be inserted in any such register, or in any certified copy thereof, any false entry of any matter relating to any birth, baptism, marriage, death or burial, or shall knowingly and unlawfully give any false certificate relating to any birth, baptism, marriage, death or burial, or shall certify any writing to be a copy or extract from any such register, knowing such writing, or the part of such register whereof such copy or extract shall be so given, to be false in any material particular, or shall forge or counterfeit the seal of or belonging to any register office or burial board, or shall offer, utter, dispose of or put off any such register, entry, certified copy, certificate or seal, knowing the same to be false, forged or altered, or shall offer, utter, dispose of or put off any copy of any entry in any such register, knowing such entry to be false, forged or altered, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (Previous provision, 11 Geo. 4 & 1 Will. 4, c. 66, s. 20.)

Inserting False Entries in.]—By s. 37, whosoever shall knowingly and wilfully insert, or cause or permit to be inserted, in any copy of any register directed or required by law to be transmitted to any registrar or other officer, any false entry of any matter relating to any baptism, marriage or burial, or shall forge or alter, or shall offer, utter, dispose of or put off, knowing the same to be forged or altered, any copy of any

register so directed or required to be transmitted as aforesaid, or shall knowingly and wilfully sign or verify any copy of any register so directed or required to be transmitted as aforesaid, which copy shall be false in any part thereof, knowing the same to be false, or shall unlawfully destroy, deface or injure, or shall for any fraudulent purpose take from its place of deposit, or conceal, any such copy of any register, shall be guilty of felony. (Punishment as in preceding section. Previous provision, 11 Geo. 4 & 1 Will. 4, c. 66, s. 22.)

Offence.]—If a person knowing his name to be A., signs another name without authority, he is guilty, and it is immaterial that he is a third witness, the Marriage Act only requiring two witnesses. *Reg. v. Asplin*, 12 Cox, C. C. 391.

What is an Injuring.]—Indictment under 11 Geo. 4 & 1 Will. 4, c. 66, s. 20, for destroying, defacing and injuring a register of baptisms, marriages and burials. Objection, that there was neither a destroying, defacing nor injuring, because the register, when produced, had the torn piece pasted in, and was as legible as before:—Held, that the indictment was good. *Reg. v. Bowen*, 1 Den. C. C. 22; 1 C. & K. 501.

Indictment—Intent to Defraud.]—Upon an indictment under the 24 & 25 Vict. c. 98, s. 37, for making a false entry in a marriage register, it is not necessary that the entry should be made with an intent to defraud, and it is no defence that the marriage solemnized was null and void, being bigamous. *Reg. v. Asplin*, 12 Cox, C. C. 301.

Indictment under 11 Geo. 4 & 1 Will. 4, c. 66, s. 20, for destroying, defacing and injuring a register of baptisms, marriage and burials. It was objected, that, as it did not contain an express averment of a scienter, it was bad. But held, that the objection was without foundation. *Reg. v. Bowen*, 1 Den. C. C. 22; 1 C. & K. 501.

Number of Offences charged.]—Another objection raised was, that, as three distinct and different offences were charged, it was bad for uncertainty. This objection was also overruled. *Id.*

Setting out Instrument.]—The latter act made it an offence to utter any writing as and for a copy of an entry in any register of marriage made or kept by the vicar of any parish in England:—Held, first, that the indictment for that offence need not set out the instrument, as the words of 2 & 3 Will. 4, c. 123, s. 3, stating it to be sufficient in forgery to describe the instrument as in an indictment for stealing it, were applicable to such a case, although the instrument itself could not be the subject of an indictment for larceny. *Reg. v. Sharpe*, 8 C. & P. 436.

Trial—Judicial Notice.]—Held, secondly, that the judges could take judicial notice that the parish of Seighford, in the county of Stafford, is a parish in England, and that the indictment need not aver that fact. *Id.*

o. Registry of Deeds.

Statute.]—By 24 & 25 Vict. c. 98, s. 31, who-

soever shall forge or fraudulently alter, or shall offer, utter, dispose of or put off, knowing the same to be forged or fraudulently altered, any memorial, affidavit, affirmation, entry, certificate, indorsement, document or writing made or issued under the provisions of any act passed or hereafter to be passed for or relating to the registry of deeds; or shall forge or counterfeit the seal of or belonging to any office for the registry of deeds, or any stamp or impression of any such seal; or shall forge any name, handwriting or signature purporting to be the name, handwriting or signature of any person to any such memorial, affidavit, affirmation, entry, certificate, indorsement, document or writing which shall be required or directed to be signed by or by virtue of any act passed or to be passed, or shall offer, utter, dispose of or put off any such memorial or other writing as in this section before mentioned, having thereon any such forged stamp or impression of any such seal, or any such forged name, handwriting or signature, knowing the same to be forged, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years, and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

p. Seals of the Kingdom.

Statute.—By 24 & 25 Vict. c. 98, s. 1, whosoever shall forge or counterfeit, or shall utter, knowing the same to be forged or counterfeited, the great seal of the United Kingdom, her Majesty's privy seal, any privy signet of her Majesty, her Majesty's royal sign-manual, any of her Majesty's seals appointed by the twenty-fourth article of the union between England and Scotland to be kept, used and continued in Scotland, the great seal of Ireland, or the privy seal of Ireland, or shall forge or counterfeit the stamp or impression of any of the seals aforesaid, or shall utter any document or instrument whatsoever having thereon or affixed thereto the stamp or impression of any such forged or counterfeited seal, knowing the same to be the stamp or impression of such forged or counterfeited seal, or any forged or counterfeited stamp or impression made or apparently intended to resemble the stamp or impression of any of the seals aforesaid, knowing the same to be forged or counterfeited, or shall forge or alter, or utter, knowing the same to be forged or altered, any document or instrument having any of the said stamps or impressions thereon or affixed thereto, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (Previous provision, 11 Geo. 4 & 1 Will. 4, c. 56, s. 2.)

q. Stamps and Marks on Plate.

Stamps—Part Dissimilar Concealed.—If a person engraves a counterfeit stamp, similar in some parts, dissimilar in others, to the legal stamp, and, cutting out the dissimilar parts,

utters the similar parts as genuine, concealing the space whence the dissimilar part is cut out; this amounts to a forgery and uttering. *Re v. Collicott*, R. & R. C. C. 212; 2 Leach, C. C. 1048; 4 Taunt. 300.

—**Transposing Stamps.**—It was the duty of a clerk in the stamp office to cut off the corners of parchments which bore the blue paper stamps allowed for as spoiled by the commissioners of stamps, and to put the blue paper stamps and the small pieces of parchment so cut off, and which were glued to them, into the fire, without separating them. Instead of doing this, he separated a blue paper stamp from the small piece of parchment to which it had been glued, and glued it to a new skin of parchment on which the words "This indenture" had been written. The jury found that he had no fraudulent intent when he cut the stamp from the skin of parchment, but that he had when he separated the blue paper stamp from the small piece of parchment; and that he then intended to apply the stamp to a parchment intended to be used as an indenture.—Held, that this was a capital offence. *Re v. Smith*, 5 C. & P. 107; 1 M. C. C. 314.

—**Transferring Stamps.**—Quære, whether a person who took some of the stamps from a writ, and then fixed them to another writ of the same kind, and then sold it for the purpose of its being used by such persons as might buy it from his vendee, was within 12 Geo. 3, c. 48. *Re v. Field*, 1 Leach, C. C. 383.

—**Intent—Using the same Stamp more than once.**—To constitute a felony under 12 Geo. 3, c. 48, s. 1, of writing some matter or thing liable to stamp-duty on paper on which had been before written some other matter liable to stamp duty, before the paper had been again stamped, it was essential that the party writing should do it with some fraudulent intent. *Reg. v. Allday*, 8 C. & P. 136.

Indictment.—It being uncertain whether the stamp so separated was impressed before or after 54 Geo. 3, c. 184.—Held, that the party might be properly convicted on a count stating the stamp to be the impression of a die made and used "in pursuance of the statute made and provided for denoting a certain duty, being one of those under the management of the commissioners of stamps." *Re v. Smith*, 5 C. & P. 107; 1 M. C. C. 314.

In describing the offence of forging a stamp, it is enough to describe it as a stamp provided and used in pursuance of an act of parliament, without setting out the impression or inscription, or naming the amount of duty denoted thereby. *Re v. Collicott*, R. & R. C. C. 212; 2 Leach, C. C. 1048; 4 Taunt. 300.

—**Trial—Venne—Having false Stamped Paper.**—Where on an indictment for having in possession certain reams of paper, with counterfeit marks, and impressions of certain stamps used to denote the duty imposed in respect of paper, on the covers or wrappers, it was proved that the paper came from the prisoner at Exeter, and was brought thence by his servant to Topsham, in the county of Devon, and seized by the custom officer on board a vessel at Topsham:—Held, that this was in law a custody and pos-

session in the prisoner in the county of Devon sufficient to maintain the indictment in that county. *Reg. v. Pim*, R. & R. C. C. 425.

Plate—Marks on—Selling, when Forged.]—Knowingly selling plate with the king's mark forged on it, was not capital, but only subject to transportation. *Reg. v. Hope*, 1 M. C. C. 396.

—Transposing Mark.]—A person might be found guilty under 13 Geo. 3, c. 52, s. 14, and 38 Geo. 3, c. 69, s. 7, if proved to have transposed the mark of the Goldsmiths' Company from one gold ring to another, although both rings were genuine, and although the jury might be of opinion that he did so without any fraudulent intention. *Reg. v. Ogden*, 6 C. & P. 631.

r. Stock Certificates and Coupons.

Statute.]—By 33 & 34 Vict. c. 58, provision is made for the forgery of stock certificates and coupons, for personating owners of stock, for engraving plates, &c., for stock certificates or coupons, and for forgery of certificates of transfers of stock.

s. Trade Marks.

(*Sec 25 & 26 Vict. c. 88.*)

Forgery or False Pretences.]—The prosecutor, Borwick, sold powders called "Borwick's baking powders," and "Borwick's egg powders," wrapped up in printed papers. The prisoner procured 10,000 wrappers to be printed similar to Borwick's, except that the name of Borwick was omitted on the baking powders. In these wrappers the prisoner inclosed powders of his own, which he sold for Borwick's powders. The jury found that the wrappers so far resembled Borwick's as to deceive persons of ordinary observation, and that they were procured and used by the prisoner with an intent to defraud:—Held, that he could not be convicted of forgery, though he was liable to be indicted for false pretences. *Reg. v. Smith*, 8 Cox, C. C. 32; *Dears & B. C. C.* 566; 27 L. J., M. C. 225; 4 Jur., N. S. 1003.

t. Transfer of Stocks, &c., and Powers of Attorney.

Altering, Uttering and Putting off.]—By 24 & 25 Vict. c. 98, s. 2, *whosoever shall forge or alter, or shall offer, utter, dispose of or put off, knowing the same to be forged or altered, any transfer of any share or interest of or in any stock, annuity or other public fund which now is or hereafter may be transferable at the Bank of England or at the Bank of Ireland, or of or in the capital stock of any body corporate, company or society which now is or hereafter may be established by charter, or by, under or by virtue of any act of parliament, or shall forge or alter, or shall offer, utter, dispose of or put off, knowing the same to be forged or altered, any power of attorney or other authority to transfer any share or interest of or in any such stock, annuity, public fund or capital stock, or to receive any dividend or money payable in respect of any such share or interest, or shall demand or endeavour to have any such share or interest transferred, or to receive any dividend or money payable in respect thereof, by virtue of any such forged or altered power of attorney or other au-*

thority, knowing the same to be forged or altered, with intent in any of the cases aforesaid to defraud, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (Former enactment, 11 Geo. 4 & 1 Will. 4, c. 66, s. 6.)

Forging Name or Signature.]—By s. 4, *whosoever shall forge any name, handwriting or signature purporting to be the name, handwriting or signature of a witness attesting the execution of any power of attorney or other authority to transfer any share or interest of or in any such stock, annuity, public fund or capital stock as is in either of the last two preceding sections mentioned, or to receive any dividend or money payable in respect of any such share or interest, or shall offer, utter, dispose of or put off any such power of attorney or other authority, with any such forged name, handwriting or signature thereon, knowing the same to be forged, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years, and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (Previous provision, 11 Geo. 4 & 1 Will. 4, c. 66, s. 8.)*

Stock never Accepted nor Transfer Witnessed.]—An indictment for forging a transfer of stock is good, although the stock has never been accepted by the person in whose name it stood, and although the transfer was not witnessed according to the rules and directions of the bank. *Reg. v. Gade*, 2 Leach, C. C. 732; 2 East, P. C. 874.

Who is Person Defrauded.]—A., a share-broker, had bought twenty shares in a railway company of B., a broker, which stood in the name of P.; but L. did not send A. the deed of transfer, as A. was in embarrassed circumstances, and owed L. money. A. procured a boy to execute a deed of transfer of the shares in the name of P.; all the calls in the shares had been paid up:—Held, a forgery, and that A. could be convicted on counts laying an intent to defraud P. and the railway company. *Reg. v. Hatson*, 2 C. & K. 777.

—In Companies—Evidence that Individual is Shareholder.]—On an indictment for forging and uttering a transfer of shares in a railway company, the register of shareholders bearing the seal of the company, and kept according to 8 & 9 Vict. c. 16, s. 9, is evidence to shew that an individual is a shareholder, without further authentication; and in order to prove that such individual is liable to be defrauded by the forging and uttering of a transfer of the shares, it is not necessary to give further proof of his title to the shares. *Reg. v. Nash*, 2 Den. C. C. 493; 21 L. J., M. C. 147; 16 Jur. 553.

Power of Attorney.]—A power of attorney to transfer government stock, signed, sealed and delivered, was a deed within 2 Geo. 2, c. 25, s. 1.

Re v. Fauntleroy, 1 M. C. C. 52; 2 Bing. 413; 10 Moore, 1; 1 C. & P. 421; *S. P.*, *Re v. Pringle*, 1 M. C. C. 68.

Forging a power of attorney to receive a seaman's wages, in the name of a supposed child as administratrix of such seaman, who, in fact, died childless, is a forgery. *Re v. Lewis*, 2 East, P. C. 957.

Making false Entries in public Transfer Books.—By 24 & 25 Vict. c. 98, s. 5, *whosoever shall wilfully make any false entry in, or wilfully alter any word or figure in, any of the books of account kept by the Bank of England or the Bank of Ireland, in which books the accounts of the owners of any stock, annuities or other public funds which now are or hereafter may be transferable at the Bank of England or at the Bank of Ireland shall be entered and kept, or shall in any manner wilfully falsify any of the accounts of any such owners in any of the said books, with intent in any of the cases aforesaid to defraud, or shall wilfully make any transfer of any share or interest of or in any stock, annuity or other public fund which now is or hereafter may be transferable at the Bank of England or at the Bank of Ireland, in the name of any person not being the true and lawful owner of such share or interest, with intent to defraud, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (Former enactment, 11 Geo. 4 & 1 Will. 4, c. 66, s. 5.)*

Bank Dividend Warrants.—By s. 6, *whosoever, being a clerk, officer, or servant of, or other person employed or intrusted by, the Bank of England or the Bank of Ireland, shall knowingly make out or deliver any dividend warrant, or warrant for payment of any annuity, interest or money payable at the Bank of England or Ireland, for a greater or less amount than the person on whose behalf such warrant shall be made out is entitled to, with intent to defraud, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (Former provision, 11 Geo. 4 & 1 Will. 4, c. 66, s. 9.)*

u. Warrants, Orders, Undertakings, Requests, and Receipts for Goods or for Money.

- i. Statutes.
- ii. Goods, in respect of, 258.
- iii. Money, in respect of, 260.
- iv. Indictment and Evidence, 268.

i. Statutes.

By 24 & 25 Vict. c. 98, s. 23, *whosoever shall forge or alter, or shall offer, utter, dispose of or put off, knowing the same to be forged or altered,*

any undertaking, warrant, order, authority or request for the payment of money, or for the delivery or transfer of any goods or chattels, or of any note, bill or other security for the payment of money, or for procuring or giving credit, or any indorsement on or assignment of any such undertaking, warrant, order, authority or request, or any accountable receipt, acquittance, or receipt for money or for goods, or for any note, bill or other security for the payment of money, or any indorsement on or assignment of any such accountable receipt, with intent, in any of the cases aforesaid, to defraud, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (Former provision, 11 Geo. 4 & 1 Will. 4, c. 66, ss. 3, 10.)

By Procuration.—By s. 24, *whosoever, with intent to defraud, shall draw, make, sign, accept or indorse any bill of exchange or promissory note, or any undertaking, warrant, order, authority or request, for the payment of money, or for the delivery or transfer of goods or chattels, or of any bill, note or other security for money, by procuration or otherwise, for, in the name or on the account of any other person, without lawful authority or excuse, or shall offer, utter, dispose of or put off any such bill, note, undertaking, warrant, order, authority or request so drawn, made, signed, accepted or indorsed by procuration or otherwise, without lawful authority or excuse, as aforesaid, knowing the same to have been so drawn, made, signed, accepted or indorsed as aforesaid, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.*

A building society was in the practice of taking money on deposit at interest, and upon repaying the deposit required a receipt to be given by the depositor for the amount repaid. A person was convicted of forging one of such receipts, which was in the following form:—"Received of the South Lancashire Building Society, 417l. 13s. on account of my share, No. 8071, pp. Susey Ambler, William Kay." Susey Ambler was the depositor, and the prisoner a local agent of the society. By the custom of the society such a document was treated as an authority, warrant or request to pay the deposit, but not as an order:—Held, that the document might be described in the indictment as a warrant, authority or request for the payment of money by procuration within the 24 & 25 Vict. c. 98, s. 24. *Reg. v. Kay*, 1 L. R., C. C. 257; 39 L. J., M. C. 118; 22 L. T. 557; 18 W. R. 934.

ii. In respect of Goods.

Orders for the Delivery of Goods—Direction to Person having Possession.—A forged order for the delivery of goods was not within 7 Geo. 2, c. 22, unless directed to the person who had the goods. *Re v. Clinch*, 1 Leach, C. C. 540; 2 East, P. C. 938.

— **Proof of Disposing Power.**—[In a case of forging an order, the order charged as forged must import that the person making it has a disposing power over the subject of the order, or there ought to be proof that the person in whose name it was made had such power. *Reg. v. Baker*, 1 M. C. C. 231.]

A prisoner convicted on or confessing to an indictment for uttering a forged order, ought not to have judgment passed, if it appears that the person whose name is forged had no authority to order, and the writing merely purports to be a request. *Reg. v. Newton*, 2 M. C. C. 59.

A forged order on a tradesman, in the name of a customer, requesting that the goods mentioned in it might be delivered to the bearer, was not within 7 Geo. 2, c. 22, if the customer had no interest in the goods mentioned. *Reg. v. Williams*, 1 Leach, C. C. 114; 2 East, P. C. 937.

Warrants or Orders for Delivery of Goods—What are.—[Forging an order in the name of a silversmith for the re-delivery of plate from Goldsmiths' Hall, viz., "Please to deliver my work to the bearer," was within 7 Geo. 2, c. 22, and 13 Geo. 3, c. 26. *Reg. v. Jones*, 1 Leach, C. C. 53; 2 East, C. C. 941.]

An order to taste wine in the London Docks, is an order for the delivery of goods, the forgery of which is a felony. *Reg. v. Illidge*, 2 C. & K. 871; T. & M. 127; 3 Cox, C. C. 552; 18 L. J., M. C. 179; 13 Jur. 543.

At the London Docks, a person bringing a tasting-order from a merchant having wine there is not allowed to taste till the order has the signature of a clerk of the company across it. A. uttered a tasting-order, with the merchant's name forged to it, by presenting it to the company's clerk for his signature across it. The clerk refused to sign it:—Held, that in this state the order was a forged order for the delivery of goods. *Id.*

A note, in the name of an overseer of the poor, to a shopkeeper, desiring him to let the prisoner have certain goods, which he would see him paid for, was not a warrant or an order for the delivery of goods within 7 Geo. 2, c. 22. *Reg. v. Mitchell*, 2 East, P. C. 936.

A forged paper in the following form:—"Per bearer, two 11-4 superior counterpanes. T. Davis, E. Twell," which was not addressed to any one, is not an order for the delivery of goods within 11 Geo. 4 & 1 Will. 4, c. 66, s. 10. *Reg. v. Cullen*, 5 C. & P. 116; 1 M. C. C. 300.

Requests for the Delivery of Goods—What are.—[A forged paper in the following form, "Per bearer, two 11-4 superior counterpanes. T. Davis, E. Twell," which was not addressed to any person, is not a request for the delivery of goods within 11 Geo. 4 & 1 Will. 4, c. 66, s. 10. *Reg. v. Cullen*, 5 C. & P. 116; 1 M. C. C. 300.]

But a request for the delivery of goods need not be addressed to any one. *Reg. v. Carney*, 1 M. C. C. 351.

A paper in the following form is a request for the delivery of goods, though not addressed to any one:—"Aug. 3, 1839—one 16-in. helmet scoop, one 4-qt. kettle—Jas Hayward." *Reg. v. Pulbrook*, 9 C. & P. 37.

If the course of dealing between A. and B. is, that A. shall write persons' names in a list with a sum against each name, on sight of which B. is to furnish goods on the credit of A. to each

person whose name is on the list to the amount set against his name, such list is a request for the delivery of goods, and the fraudulent alteration of one of the sums in it is indictable as a forgery. *Reg. v. Walters*, Car. & M. 588.

The prisoner represented that M. C. was dead, and had left him 50*l.* or 60*l.*, and it was in the hands of A. D., and that he wanted mourning. He brought a forged paper, purporting to be signed by A. D., as follows:—"Please to let W. T. have such things as he wants for the purpose. Sir, I have got the amount of 27*l.* for M. C. in my keeping these many years:"—Held that this was a forged request for the delivery of goods. *Reg. v. Thomas*, 7 C. & P. 851; 2 M. C. C. 16.

A forged paper addressed to a tradesman, and purporting to be signed by one of his customers in the following form, "Please to let bearer, William Goff, have spillovel and grafting tool for me," is a forged request for the delivery of goods. *Reg. v. James*, 8 C. & P. 292.

A forged paper in the following form, "Please to let the lad have a hat, and I will answer for the money—E. B.," is a forged request for the delivery of goods, and is not the less so because it may also be a forged undertaking for the payment of money. *Reg. v. White*, 9 C. & P. 282.

A document in the following form, "W. Trim, 2*s.*," is not a request for the delivery of goods within 11 Geo. 4 & 1 Will. 4, c. 66, s. 10, and cannot be shewn to be so by parol evidence. *Reg. v. Ellis*, 4 Cox, C. C. 258.

A person obtaining goods on delivering a forged letter, "Please to let the bearer, W. T., have for J. R. four yards of linen," signed J. R., can be convicted of uttering a forged request for the delivery of goods under 11 Geo. 4 & 1 Will. 4, c. 66, s. 10. *Reg. v. Evans*, 5 C. & P. 553.

Receipts for Goods—What are.—[A pawnbroker's duplicate of goods pledged with him is an accountable receipt for goods. *Reg. v. Fitchie*, Dears. & B. C. C. 175; 7 Cox, C. C. 257; 26 L. J., M. C. 90; 3 Jur., N. S. 419.]

On an indictment for forging and uttering an accountable receipt for goods, the following document was held to be an accountable receipt:—"By order of R. F. Pries, we have this day transferred into the name of Messrs. Collman and Stolterfoht, 759 quarters and 4 bushels of wheat, ex August Ferdinand, Captain Richards, a Neustadt. Entered by R. F. Pries, and now lying at our granaries, Bermondsey-wall. The wheat is insured against risk of fire by us.—Brown and Young, Corn Exchange, Oct. 23, 1852." *Reg. v. Pries*, 6 Cox, C. C. 165.

Where the prisoner signed a document which entitled him to receive a delivery note, which, in the course of business of a canal company, would enable him to demand and have the goods described therein delivered to him on payment of the charges for carriage:—Held, a forgery of a receipt for goods. *Reg. v. Meigh*, 7 Cox. C. C. 401.

iii. *In respect of Money.*

Warrants or Orders for Payment of Money—Name of Person addressed.—[A forged order for the payment of money need not disclose on the face of it the name of the party to whom it is addressed, but the direction may be shewn by

extrinsic evidence. *Reg. v. Snelling*, Dears. C. C. 219; 2 C. L. R. 114; 6 Cox, C. C. 230; 23 L. J., M. C. 8; 17 Jur. 1012.

It is not necessary that a warrant for the payment of money should be addressed to any particular person. *Reg. v. Rogers*, 9 C. & P. 41.

— **No Payee.**—The prisoner drew a bill upon the treasurer of the navy payable to — or order, and signed it in the name of a navy surgeon:—Held, that to constitute an order for payment of money there must be some payee; a direction to pay — or order is not sufficient. *Rea v. Richards*, R. & R. C. C. 193.

— **What are.**—A prisoner was indicted for forging an order for the payment of money, with intent to defraud "H. D., as one of the public officers of the Y. district bank." The instrument was as follows:—"Thornton-le-Moor, July 20, 1844. Mr. J. Sir, Please to pay James Jackson 13*l.*, by order of Christopher Sadler, Thornton-le-Moor, brewer. The District Bank. I shall see you on Monday. Yours, obliged, Charles Sadler:—Held, to be an order within 11 Geo. 4 & 1 Will. 4, c. 66, s. 3. *Reg. v. Carter*, 1 Den. C. C. 65; 1 C. & K. 741.

A person who knowingly utters a forged pass of a discharged prisoner, purporting to have been given under 5 Geo. 4, c. 85, may be convicted of uttering a forged warrant and order for the payment of money, although the forged pass be not precisely in the form given by that statute, and although it does not purport to be sealed with the county seal, or any seal provided for the purpose, the only seal to it being two small pieces of paper affixed to it by wafers. *Reg. v. McConnell*, 1 C. & K. 371; 2 M. C. C. 298.

The words "warrant" or "order," in 7 Geo. 2, c. 22, were synonymous. *Rea v. Mitchell*, 2 East, P. C. 936.

A bill of exchange or a banker's draft might have been charged in an indictment on 7 Geo. 2, c. 22, as an order for payment of money. *Rea v. Willoughby*, 2 East, P. C. 944; *S. P.*, *Rea v. Shepherd*, 2 East, P. C. 944; 1 Leach, 226.

A note—"Please to send 10*l.* by bearer, as I am so ill I cannot wait on you,"—was not an order for the payment of money within 7 Geo. 2, c. 22. *Rea v. Ellor*, 1 Leach, C. C. 323; 2 East, P. C. 937.

The prisoner drew a bill, "Please to pay the bearer on demand 15*l.*," and signed it with his own name, but it was not addressed to any one; there were forged upon this instrument, when uttered, the words and signature, "Payable at Messrs. Masterman & Co., White Hart-court. Wm. M'Inerheny." M'Inerheny kept cash at Masterman & Co.'s:—Held, that this was not an order for payment of money. *Rea v. Ravenscroft*, R. & R. C. C. 161.

Indictment for forging an order for payment of money. The instrument was an order to pay prisoner or order the sum of four pounds five shillings, being a month's advance on an intended voyage to Quebec, in the ship Mary Ann, as per agreement with G. M., master. The prisoner had in the margin of the order written, "On receiving this cheque I agree to sail, and be on board within sixteen hours from the date of this cheque:—Held, a good order for payment of money within the 11 Geo. 4 & 1 Will. 4, c. 66, s. 3. *Rea v. Bamfield*, 1 M. C. C. 416.

A person forging a seaman's advance note can-

not be indicted for forging or uttering it as an order for the payment of money. *Reg. v. Howie*, 11 Cox, C. C. 320.

A document in the following form, "W. Trim, 2*s.*," is not a warrant for the payment of money, within 11 Geo. 4 & 1 Will. 4, c. 66, ss. 3, 10, and cannot be shewn to be so by parol evidence. *Reg. v. Ellis*, 4 Cox, C. C. 258.

Before the 24 & 25 Vict. c. 98, s. 24, a forged request to pay a third person money on account of the supposed writer, would not sustain an indictment for forgery, describing it either as an undertaking, warrant or order for the payment of money. *Reg. v. Thorne*, 2 M. C. C. 210; Car. & M. 206.

A customer in the country had an account open with a wholesale house in London; a letter purporting to come from him was delivered at their place of business; it was in the following form:—"I shall feel obliged by your paying Mr. B. 2*l.* 7*s.* 8*d.*, and debiting me with the same. You will please have a receipt, and add the amount to invoice of order on hand." It appeared to be the practice of the house in London to pay country customers on requests of a similar description. The party who sent it by an innocent agent, and obtained the money on it, was indicted for forging and uttering it. The instrument was described in the indictment as an undertaking, a warrant and an order, each for the payment of 2*l.* 7*s.* 8*d.* The prisoner having been convicted of uttering, the judges held the conviction wrong, as the instrument was neither an undertaking, a warrant, nor an order. *Id.*

A kept a deposit account, but not a drawing account, with B., a banker, and was not entitled to draw cheques on B. C. presented a forged cheque of A. on B., which B. paid:—Held, that this was a forged warrant for the payment of money, but not a forged order; as A. had, by the course of dealing between him and B., no right to draw cheques on B. *Reg. v. Williams*, 2 C. & K. 51.

A post-dated cheque is an order for the payment of money. *Reg. v. Taylor*, 1 C. & K. 213.

A sailor's shipping-note for 2*l.* 15*s.*, payable to A. or bearer, five days after the ship shall sail, is not a void instrument under 17 Geo. 3, c. 30, but is an undertaking, warrant, or order for the payment of money within 11 Geo. 4 & 1 Will. 4, c. 66, s. 3. *Reg. v. Anderson*, 2 M. & Rob. 469.

But a warrant for wages, signed by a foreman and paid by a cashier, is not a warrant for the payment of money within 11 Geo. 4 & 1 Will. 4, c. 66, s. 10. *Reg. v. Pilling*, 1 F. & F. 324.

A certificate in the following form, "I hereby certify that the within-named William Mitchell is gaining his living by hawking," the production of which was necessary, in order that the prisoner might obtain payment of a sum of money to which he was entitled, is not a warrant or order for the payment of money within 11 Geo. 4 & 1 Will. 4, c. 66. *Reg. v. Mitchell*, 2 F. & F. 44.

For forging such a certificate the prisoner must be indicted for a forgery at common law. *Id.*

D. was indicted for having forged and uttered the following instrument:—"Mr. Lowe.—Bought of C. Dawson, English and foreign fruit merchant and potato salesman. Nov. 9th, two bushels of apples, 9*s.* Sir,—I hope you will excuse me

sending for such a trifle, but I have received a lawyer's letter this morning, and unless I can make up a certain amount by one o'clock, there will be an action commenced against me, and I am obliged to hunt after every shilling. Yours, &c., F. Dawson."—Held, that this was properly described as a warrant for the payment of money. *Reg. v. Dawson*, T. & M. 428; 2 Den. C. C. 75; 5 Cox, C. C. 220; 20 L. J., M. C. 102; 15 Jur. 159.

"Three days after the ship *Selah* has sailed from the port of Sunderland, please to pay to John Wilson or bearer, the sum of four pounds 0 shillings and 0 pence (provided the said John Wilson has actually sailed in the said ship), being part of his wages in advance, on her intended voyage to Alexandria.—John Robson, Master. To Mr. John Stobart, owner of ship," is an order for payment of money. *Reg. v. Lonsdale*, 3 Cox, C. C. 222.

A forged paper was in the following form:—"To M. & Co. Pay to my order, two months after date, to Mr. J. S., 80L., and deduct the same out of my account." It was not signed, but across it was written, "Accepted, Luke Lade;" and at the back the name and address of J. S. M. & Co. were bankers, and Luke Lade kept cash with them:—Held, that this paper was a warrant for the payment of money, as, if genuine, it would have been a warrant from Luke Lade to the bankers to pay the money to J. S. *Reg. v. Smith*, 1 C. & K. 700; 1 Den. C. C. 79.

"Mr. M. will be pleased to send by the bearer 10L. on Mr. H.'s account, as Mr. H. is very bad in bed, and cannot come himself," and the paper purported to be signed, "Mr. R., foreman, St. A. Foundry," and Mr. M. was clerk to Messrs. C., bankers, with whom Mr. H. kept an account, and R. was foreman to Mr. H., but had no authority to draw on Mr. H.'s banker, is a warrant for the payment of money. *Reg. v. Virian*, 1 C. & K. 719; 1 Den. C. C. 35.

Any instrument for payment, under which, if genuine, the payer may recover the amount against the party signing it, may be properly considered a warrant for the payment of money; and it is equally this, whatever be the state of the account between the parties, and whether the party signing it has, at the time, funds in the hands of the party to whom it is addressed, or not. *Ib.*

A writing, purporting to authorize the bearer to receive money deposited in a bank by a friendly society on accountable receipts, and purporting to be signed by the principal officers of the society, may, in an indictment for forgery, be alleged to be a warrant for the payment of money. *Reg. v. Harris*, 2 M. C. C. 267; 1 C. & K. 179.

An order for the payment of prize-money, signed in the name of a seaman, was an order for the payment of money within 7 Geo. 2, c. 22, the forgery of which was felony, although the requisites of 32 Geo. 3, c. 34, s. 2, had not been complied with. *Ree v. McIntosh*, 2 East, P. C. 942, 956; 2 Leach, C. C. 883.

A dividend warrant of a railway company, signed by the secretary, and addressed to a banker, required the latter to pay the amount to L. (a shareholder) or order, and to charge the same to the company's revenue account. It further required the shareholder's name to be indorsed, and the banker would not pay the money without such indorsement. The prisoner uttered this dividend warrant, knowing that the indorsement of the shareholder's name was a forgery, and he

was convicted upon an indictment which charged him in one count with uttering a warrant for the payment of money, and in another with uttering an order for the payment of money:—Held, that the document was properly described. *Reg. v. Autey*, Dears. & B. C. C. 294; 7 Cox, C. C. 329; 26 L. J., M. C. 190; 3 Jur., N. S. 697.

— **Post-office Money Orders.**—A post-office money order purporting to be signed by a local postmaster, and addressed to the Post-office, London, in the following form, "Credit the person named in my letter of advice the sum of 5L., and debit the same to this office," is both a warrant and an order for the payment of money. *Reg. v. Gilchrist*, Car. & M. 224; 2 M. C. C. 233.

V. was indicted for uttering forged orders for the payment of money, and convicted. He had fraudulently obtained certain forms of post-office orders from the office at A., and also some with the N. stamp affixed. These orders being filled up, and signed "G. J., pro postmaster," there being no one of the name of G. J. at N., were uttered by V. in payment for goods at D. No letters of advice were forwarded to D.:—Held, that V. was rightly convicted. *Reg. v. Vanderstein*, 16 Ir. C. L. R. 574; 10 Cox, C. C. 146.

A prisoner named T. Story went to the post-office at N., and inquired for a letter directed to "T. Story, post-office, Nottingham, to be left till called for;" and a letter directed to T. Storer, post-office, was given him, the postmaster supposing that the prisoner was the person to whom it was directed, not noticing the difference of names; the letter contained a money order, of which the prisoner obtained payment on signing his own name on the back of it:—Held, that this was not forgery. *Ree v. Story*, R. & R. C. C. 81.

— **Letters of Credit.**—A letter of credit, on which the correspondents of the writer of it, having funds of his in their possession, apply them to the use of the party in whose favour it is given, is a warrant for the payment of money. *Reg. v. Roake*, 8 C. & P. 626; 2 M. C. C. 66.

An indorsement on a letter of credit is not an order, as not being within the original mandate. *Reg. v. Wilton*, 1 F. & F. 391.

— **Indorsement on Warrant.**—It was not an offence under 11 Geo. 4 & 1 Will. 4, c. 66, to forge an indorsement upon a warrant or order for the payment of money. *Ree v. Arseott*, 6 C. & P. 408. *But see* 24 & 25 Vict. c. 98, s. 24.

Undertakings for the Payment of Money.—What are.—A guarantee is the subject of forgery, though no consideration appears, and 19 & 20 Vict. c. 97, s. 3, gives validity to such an undertaking. *Reg. v. Coelho*, 9 Cox, C. C. 8.

Indictment under 11 Geo. 4 & 1 Will. 4, c. 66, s. 3, for uttering a forged undertaking for the payment of money:—Held, that the statute applied as well to a written promise for the payment of money by a third person as to a like promise of payment by the supposed party to the instrument. *Reg. v. Stone*, 1 Den. C. C. 181; 2 C. & K. 364.

A forged instrument, by which the supposed maker of it, in consideration of goods to be sold to P., undertakes to guarantee to the vendor the due payment for all such goods so to be sold to P.,

but so that the supposed maker should not be liable beyond 10*l.*, is a forged undertaking for the payment of money. *Id.*

Forging a document purporting to guarantee a master to a certain amount in money against the dishonesty of a clerk, is forging an undertaking for the payment of money within 24 & 25 Vict. c. 98, s. 23. *Reg. v. Joyce*, 10 Cox, C. C. 100; L. & C. 576; 34 L. J., M. C. 168; 11 Jur., N. S. 472; 12 L. T. 351; 13 W. R. 662.

The forging of a paper, by which the supposed writer promises to pay to B., or order, 100*l.*, or such other sum, not exceeding the same, as he may incur by reason of his becoming one of the sureties to the sheriff of Y., for J. R., a sheriff's officer, is a forgery of an undertaking for the payment of money. *Reg. v. Need*, 8 C. & P. 623; 2 Lewin, C. C. 185.

A debtor being pressed for payment of a debt, obtained further time to pay, by giving, as security, an I O U, purporting to be signed by himself and another, the signature of the latter being forged by the debtor:—Held, that the instrument was an undertaking for the payment of money within 24 & 25 Vict. c. 98, s. 23. *Reg. v. Chambers*, 1 L. R., C. C. 341; 41 L. J., M. C. 15; 25 L. T. 507; 20 W. R. 103; 12 Cox, C. C. 109.

An instrument professing to be a scrip certificate of a railway company, was not an undertaking for the payment of money within 11 Geo. 4 & 1 Will. 4, c. 66. *Reg. v. West*, 1 Den. C. C. 258; 2 C. & K. 496; S. P., *Clarke v. Newsam*, 5 Railw. Cas. 69; 1 Ex. 131; 16 L. J., Ex. 296.

Before 24 & 25 Vict. c. 98, s. 24, a forged request to pay a third person money on account of the supposed writer would not sustain an indictment for forgery, describing it as an undertaking for the payment of money. *Reg. v. Thorne*, 2 M. C. C. 210; Car. & M. 206.

A sailor's shipping note for 2*l.* 15*s.* payable to A. or bearer, five days after the ship shall sail, is an undertaking for the payment of money within 11 Geo. 4 & 1 Will. 4, c. 66, s. 3. *Reg. v. Anderson*, 2 M. & Rob. 469.

A certificate in the following form, "I hereby certify that the within-named William Mitchell is gaining his living by hawking," the production of which was necessary, in order that the prisoner might obtain payment of a sum of money to which he was entitled, is not an undertaking for the payment of money within 11 Geo. 4 & 1 Will. 4, c. 66. *Reg. v. Mitchell*, 2 F. & F. 44.

Security for the Payment of Money.—[The prisoner having borrowed 35*l.* and being pressed for payment, obtained further time by giving as security an instrument which was set out in the indictment in the words and figures following:—

November 21, 1870.

I O U thirty-five pounds,

35*l.*

Arthur Chambers,
George Wickham.

The name "George Wickham" was forged by the prisoner, and he was convicted under 24 & 25 Vict. c. 98, s. 23, of forging the instrument, which was described as a security:—Held, that the instrument was rightly described. *Reg. v. Chambers*, 1 L. R., C. C. 341; 41 L. J., M. C. 15; 25 L. T. 507; 20 W. R. 103; 12 Cox, C. C. 109.

Acquittance or Receipt—What is.]—A friendly society had branches in various towns. A member belonging to one branch could not be received into the court of another branch as a clearance member without a document called a "clearance," certifying that he had paid all the dues and demands of the branch to which he belonged, and authorizing the other branch to receive him:—Held, that such clearance was not an acquittance or a receipt for money within 24 & 25 Vict. c. 98, s. 23, and that a conviction for forging such a document could not be sustained. *Reg. v. French*, 1 L. R., C. C. 217; 39 L. J., M. C. 58; 21 L. T. 726; 18 W. R. 354.

A railway ticket is not an acquittance or a receipt within the above statute. *Reg. v. Goodon*, 11 Cox, C. C. 672.

A turnpike toll-gate ticket is a receipt for money within 24 & 25 Vict. c. 98, s. 23. *Reg. v. Fitch*, L. & C. 159; 9 Cox, C. C. 160; 8 Jur., N. S. 624; 6 L. T. 256; 10 W. R. 489.

The prisoner was a collector of rates for a corporation. While in the service he received cash from the prosecutor on account of a rate, for which he gave a receipt. After he had left the service, he called on the prosecutor for the balance, which was paid, and for a receipt. The prisoner altered the figures in the former receipt, which then appeared as a receipt for the entire rate due:—Held, not to be a forgery. *Reg. v. Sargent*, 10 Cox, C. C. 161.

If a party wrote on the back of a bill of exchange payable to R. A., "Received for R. A.," and signed his own name to it, he was not guilty under 11 Geo. 4 & 1 Will. 4, c. 66, of forging a receipt. *Reg. v. Ascott*, 6 C. & P. 408. *But see* 24 & 25 Vict. c. 98, s. 24.

It being the duty of a railway station-master to pay B. for delivering and collecting parcels, he falsely told B. that the company had determined to pay him only for collecting, and not for delivering, and accordingly then continued to pay him only for collecting, but he continued to charge the company with payments purporting to be made to B. for delivering. In order to furnish a voucher to the company for these pretended payments, the station-master, after paying B.'s servant the sum entered under the head "collecting," in the printed form supplied by the company, and obtaining his receipt in writing for that amount, without his or B.'s knowledge, put a receipt stamp under the servant's name, and wrote thereon in figures a sum, being the aggregate for collecting and delivering:—Held, that he was properly convicted of forgery. *Reg. v. Griffiths*, Dears. & B. C. C. 548; 7 Cox, C. C. 501; 27 L. J., M. C. 205; 4 Jur., N. S. 442.

A stamped memorandum, importing that A. B. had paid a sum of money to C. D., but not importing any acknowledgment from C. D. of his having received it, was not such a receipt as 2 Geo. 2, c. 25, s. 1, made it capital to forge or utter. *Reg. v. Harvey*, R. & R. C. C. 227.

An entry of the receipt of money or notes made by a cashier of the Bank of England in the bank book of a creditor was an accountable receipt for the payment of money within 7 Geo. 2, c. 22. *Reg. v. Harrison*, 1 Leach, C. C. 180; 2 East, P. C. 927, 988.

Forging an indenture of apprenticeship and a receipt for the apprenticeship fee, with intent to defraud the stewards of the Feast of the Sons of

the Clergy, was forgery. *Rea v. Jones*, 1 Leach, C. C. 366; 2 East, P. C. 991.

The name of the holder of a navy bill, signed on a proper receipt stamp, and affixed to the navy bill, did not on the face of it purport to be a receipt for money within 2 Geo. 2, c. 25, and 7 Geo. 2, c. 22; but as the money was paid on such signature, and it always had been considered as a receipt at the Navy Office, it might, by proper averments in the indictment, be brought within the protection of the statutes as a receipt for money. *Rea v. Hunter*, 2 Leach, C. C. 624; 2 East, P. C. 928, 977.

If a person, employed by the executors of a public accountant to settle the accounts of the testator with government, procure fabricated vouchers, and deliver them to the Navy Board, in order to exonerate the estate of the testator from an extent, it was a forging and uttering within 2 Geo. 2, c. 25. *Rea v. Thomas*, 2 Leach, C. C. 877; 2 East, P. C. 934.

A scrip receipt not filled up with the name of the subscriber is not a receipt for money within the statutes against forgery. *Rea v. Lyon*, 2 Leach, C. C. 597; 2 East, P. C. 933.

A servant employed by her mistress to pay tradesmen's bills, received from her a bill of a tradesman named Sadler, together with the money to pay that and other bills. She brought the bill again to her mistress, with the words "paid Sadler" on it, the word Sadler being written with a small s, and there being no initial of the christian name of the tradesman. The mistress stated that she believed the words to be a receipt and that no application was made for the money afterwards:—Held, on an indictment for forgery, that the words "paid Sadler," under the circumstances, imported a receipt or an acquittance for the money, and were not merely a memorandum by the servant of her having paid the bill. *Reg. v. Houseman*, 8 C. & P. 180.

The words "Settled, Samuel Hughes," at the foot of a bill of parcels, import a receipt and an acquittance. *Rea v. Martin*, 7 C. & P. 549; 1 M. C. C. 483.

The prisoner, a pay-serjeant of the artillery, obtained from the paymaster a receipt for a sum of money as part of subsistence of a company for the month of May. He afterwards erased May and inserted June, and gave the receipt to a tradesman, who, according to the usual practice, advanced the sum to the prisoner, and sent the receipt to the agent of the regiment, who paid the amount. The indictment for forgery, describing the instrument as a receipt, was good. *Rea v. Hope*, 1 M. C. C. 414.

The provisions of the 7 Geo. 4, c. 16, s. 38, extend to the forging and uttering a receipt, or other document, relating to a Chelsea pension, supposed to be payable, and are not confined to cases of forging and uttering receipts and other documents relating to pensions in actual existence. *Reg. v. Pringle*, 9 C. & P. 408; 2 M. C. C. 127.

An instrument purporting to be an agreement, and stamped as such, and reciting that an arrangement had been made between the parties thereto in consideration of a certain sum, the receipt of which was thereby acknowledged, and then proceeding to release the party paying it from all further claim in the matter in respect of which it was paid, is a receipt or an acquittance under 11 Geo. 4 & 1 Will. 4, c. 66, s. 10, and may be so described in an indictment for forgery. *Reg. v. Hill*, 2 Cox, C. C. 246.

Where it was shewn to be the custom of bankers to give receipts on the deposit of money in the following form, "Received of A. eighty-five pounds to his credit. This receipt not transferable;" and to repay the money with interest on the return of this receipt, with A.'s name written on it:—Held, that forging the name of A., and receiving the money due on its return, was a forging and uttering an acquittance for 85*l.* *Reg. v. Atkinson*, 2 M. C. C. 215; Car. & M. 325.

It was the practice of the treasurer of a county, when an order had been made on him for the payment of expenses of a prosecution, to pay the whole amount to the attorney for the prosecution, or his clerk, and to require the signature of every person named in the order to be written on the back of it, and opposite to each name the sum ordered to be paid to each person:—Held, that such a signature is not a receipt, the forging of which is an offence against 11 Geo. 4 & 1 Will. 4, c. 66, s. 10, and that it is merely an authority to the treasurer to pay the amount. *Reg. v. Cooper*, 2 C. & K. 586.

A receipt, signed by the captain of a detachment, on the authority of which money is received from an army agent, on account of the monthly subsistence for such detachment, might be properly described as a receipt for money, under 2 & 3 Will. 4, c. 123, s. 3, although it appeared that such instruments were frequently cashed, upon indorsement, by tradesmen in the neighbourhood of the place where the regiment was stationed, and the amount afterwards received by them of the army agent. *Rea v. Riee*, 6 C. & P. 634.

A scrip certificate in a railway company is not an accountable receipt, or an acquittance or a receipt within 11 Geo. 4 & 1 Will. 4, c. 66, s. 10; therefore the forgery of such a document is not a felony, but a misdemeanor only. *Clarke v. Newsam*, 1 Ex. 131; 5 Railw. Cas. 69; 16 L. J., Ex. 296; *S. P.*, *Reg. v. West*, 1 Den. C. C. 258; 2 C. & K. 496; 2 Cox, C. C. 437.

— **Alteration or Addition.**—If a high constable issues his precept for the payment of a county rate amounting to 3*l.* 5*s.* 9*d.*, and having received the money, writes a receipt at the bottom of the paper, "Received the above rate, J. P.," and after that, the sum of 3*l.* 5*s.* 9*d.* in the receipt is fraudulently altered to 3*l.* 15*s.* 9*d.*: this is a forgery of a receipt within 11 Geo. 4 & 1 Will. 4, c. 66, s. 10. *Reg. v. Vaughan*, 8 C. & P. 276.

After a receipt was signed by the person giving it, the person to whom it was given added words above the signature:—Held, that it was for the jury to say whether the addition of these words altered the effect of the receipt. *Reg. v. Milton*, 10 Cox, C. C. 364.

Held, also, that it was doubtful whether such addition amounted to forgery. *Ib.*

A person makes a copy of a receipt, and adds to it other words, as, for example, "in full of all demands," which were not in the original. It is a forgery if the copy is offered in evidence on the supposed loss of the original. *Upfold v. Leit*, 5 Esp. 100.

iv. *Indictment and Evidence.*

Upon Receipts.—*"As follows"* is a sufficient averment of the tenor of a forged receipt. *Rea*

v. *Powell*, 2 W. Bl. 787; 1 Leach, C. C. 77; 2 East, P. C. 976.

An indictment for forging a receipt in the following form, "6th January, 1830, 16l. 15s. 6d. For the high constable, James Hughes," does not require explanatory averments. *Reg. v. Boardman*, 2 M. & Rob. 147; 2 Lewin, C. C. 81.

A count charging the uttering a false receipt simply is good. *Ree v. Martin*, 1 M. C. C. 483; 7 C. & P. 549.

An indictment charging that a precept had been issued to Christopher Hindle, high constable of B., to collect 21l. 11s. 4d., and that a receipt for 21l. 11s. 4d. had been forged, by falsely cementing to the precept, at the foot, a receipt in the hand-writing of Henry Hargreaves, of the tenor following, "1825, received H. H.," which had before then been written by Hargreaves for other money, and that the prisoner uttered it with intent to defraud Hargreaves, is bad, because there is nothing to shew what the initials H. H. meant, and nothing to shew what connexion Hargreaves had with Hindle, or with the receipt. *Ree v. Barton*, 1 M. C. C. 141.

An indictment for uttering a forged receipt for money, which sets out the receipt in terms, need not set forth the bill of items to which the receipt refers, as that is matter of evidence. *Ree v. Testick*, 2 East, P. C. 925; *S. P.*, *Ree v. Thompson*, 2 Leach, C. C. 632, n.; 1 East, 181, n.

An indictment on 7 Geo. 4, c. 16, s. 38, charging the prisoner with having forged and uttered "a certain receipt relating to and concerning the payment of a certain pension, to wit, 4l. 11s. 0½d., supposed to be payable to one N. M., as an out-pensioner of the Royal Hospital for Soldiers at Chelsea, in the county of Middlesex," is good. *Reg. v. Pringle*, 9 C. & P. 409; 2 M. C. C. 127.

— **Intent to Defraud.**—If a high constable issues his precept for the payment of a county rate amounting to 3l. 5s. 9d., and having received the money writes a receipt at the bottom of the paper, "Received the above rate, J. P.," and after that the sum of 3l. 5s. 9d. in the receipt is fraudulently altered to 3l. 15s. 9d.; this is a forgery of a receipt within 11 Geo. 4 & 1 Will. 4, c. 66, s. 10, and may be laid with intent to defraud any rated inhabitant (by name) of the parish on which the rate is imposed (and others). *Reg. v. Vaughan*, 8 C. & P. 276.

Upon Requests, Orders or Warrants for Delivery of Goods.—A count in an indictment for forging a request for the delivery of goods, which described the forged instrument as "a certain forged request for the delivery of goods to one J. R.," was good under 2 & 3 Will. 4, c. 123, s. 3, and was not too general. *Reg. v. Robson*, 9 C. & P. 423.

A forged request, to be within 11 Geo. 4 & 1 Will. 4, c. 66, s. 10, must import on the face of it to be a request; and if the words have not necessarily that effect, but are so understood in the trade, there must be an innuendo to explain them. *Ree v. Cullen*, 1 M. C. C. 300; 5 C. & P. 116.

A request for the delivery of goods may be so described in an indictment for forgery, without setting it out verbatim. *Reg. v. Robson*, 2 M. C. C. 132.

If an indictment for forgery sets out a forged instrument in hæc verba, describing it as a war-

rant, order and request for the delivery of goods, it is not necessary in order to sustain the indictment, that the instrument should answer all the terms of that description. *Reg. v. Williams*, 4 Cox, C. C. 356; 2 Den. C. C. 61; 20 L. J., M. C. 106; 14 Jur. 1052; T. & M. 382.

An indictment charged the prisoner with uttering, knowing the same to be forged, a warrant, order and request for the delivery of goods in the words and figures following: "Mr. B.,—Please send by bearer a quantity of basket nails, a clasp.—E. L." It was proved that E. L. was a customer of B.'s, and had employed the prisoner in his service, and that the prisoner had delivered to B. a paper, as set forth in the indictment, which was a forgery of E. L.'s handwriting. The prisoner was convicted. On a case reserved it was objected that the paper, being only a request, did not support the indictment, which described it as a warrant, order and request:—Held, that there was no variance, as the document being set out in hæc verba in the indictment, the description of it therein became immaterial. *Id.*

A count in an indictment for forgery alleging the forgery generally to be of a certain warrant and order for the delivery of goods, without more particularity, is sufficient. *Reg. v. Smith*, 2 Cox, C. C. 358.

Upon Warrants or Orders for Payment of Money.—A prisoner was indicted on 2 & 3 Will. 4, c. 123, s. 3, for forging a warrant for the payment of money. The forged paper was as follows:—"This is to satisfy that R. R. as swept the flues and cleaned the higes, and repaired four bridges of the Princess Victoria, (signed) J. N., 4l. 10s. 0d." It was proved that, by the course of dealing between the parties, this voucher, if genuine, would have authorized L. & Co. to pay 4l. 10s. 0d.:—Held, that it is not necessary that a warrant for the payment of money should be addressed to any particular person; and that, as it appeared that this document, if genuine, would have been a voucher for the payment of the money mentioned in it, that was a sufficient proof of the allegation that it was a warrant for the payment of money. *Reg. v. Rogers*, 9 C. & P. 41.

A forged authority to draw money, which is well described as a warrant, is not an order for the payment of the money, and an indictment describing such a forged authority for the payment of money as a warrant and order, is bad. *Reg. v. Dixon*, 3 Cox, C. C. 289.

An indictment which charges a forged cheque to be "a warrant and order for the payment of money, which warrant and order are in the words and figures following," is good. *Ree v. Crowther*, 5 C. & P. 316.

Indictment for forging an order for relief to a discharged prisoner, under 3 Geo. 4, c. 85, being in many instances ungrammatical and at variance from the act:—Held bad. *Ree v. Donnelly*, 1 M. C. C. 438.

An indictment for presenting a forged order to W. L., treasurer, &c., pretending it was genuine, and obtaining from him under it 4l. 10s. 6d., after charging that the prisoner, with intent to cheat the treasurer, presented the order, and that he knowingly, &c., pretended it was a genuine order, proceeded, "and so the jurors, &c., say that the prisoner, on the day and year, &c., did obtain the said sum of 4l. 10s. 6d.," but the intent to cheat and defraud W. L. was not stated in that part of

the indictment, nor was the obtaining charged to have been effected knowingly and designedly:—Held bad. *Rea v. Rushworth*, R. & R. C. C. 317; 1 Stark. 396.

— **Intent—Evidence of.**—An instrument in the following form, "Please to pay T. E. Turberville 3*l.* 12*s.* 6*d.* for sick-pay to Brother Isaac Jones," and signed by the officers of a friendly society, and directed to the treasurer, is, on the face of it, an order within 11 Geo. 4 & 1 Will. 4, c. 64, s. 3; and may be shewn by evidence to be a warrant for the payment of money. Where a prisoner was charged with forging the above instrument, and some counts of the indictment laid the intent to be to defraud "J. C. and others," by virtue of 11 Geo. 4 & 1 Will. 4, c. 66, s. 28, and it appeared that the prisoner and J. C. and others were members of this society:—Held, that the word "others" might be held to include or exclude the prisoner, according as it was necessary, for the support of the indictment, that his name should be considered as included or excluded. Other counts of the indictment laid the intent to be to defraud W. R.:—Held, that this intent was supported by proof that W. R. was the treasurer of the society, and that it was the course of business and his duty to pay money, on having genuine orders or warrants for that purpose, in the above form. *Reg. v. Turberville*, 4 Cox, C. C. 13.

— **Evidence.**—It is no defence on an indictment for forging and uttering an order of a board of guardians of a Poor-law Union, to shew that the person who signed the order as presiding chairman was not, in fact, chairman on the day he signed, the forgery charged being of another name in the order. *Reg. v. Pihe*, 2 M. C. C. 70; 3 Jur. 27.

An indictment for forging an order for the payment of money is not sustained by a forged letter requesting a person, with whom the supposed writer had dealings, to pay money, the balance being at the time against the writer. *Reg. v. Roberts*, 2 M. C. C. 258; Car. & M. 682.

A forged order for the payment of money need not disclose on the face of it the name of the party to whom it is addressed, but the direction may be shewn by extrinsic evidence. *Reg. v. Shelling*, Dears. C. C. 219; 6 Cox, C. C. 230; 2 C. L. R. 114; 23 L. J., M. C. 8; 17 Jur. 1012.

If a document in form is not a warrant for the payment of money, the fact that it is really so, cannot be shewn by parol evidence. *Reg. v. Ellis*, 4 Cox, C. C. 258.

v. Wills.

Statute.—By 24 & 25 Vict. c. 98, s. 21, *whoever, with intent to defraud, shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any will, testament, codicil or testamentary instrument, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (Similar to 11 Geo. 4 & 1 Will. 4, c. 66, s. 3.)*

What is.—Before 7 Will. 4 & 1 Vict. c. 26, s. 9,

there could be no forgery of a will of lands, attested only by two witnesses. *Rea v. Wall*, 2 East, P. C. 953.

To forge a will was a capital offence, although the supposed testator was living. *Rea v. Sterling*, 1 Leach, C. C. 99; 2 East, P. C. 950; *S. P.*, *Rea v. Coogan*, 1 Leach, C. C. 449; 2 East, P. C. 1001.

The forgery of the will of a non-existing person is an offence within the statute. *Reg. v. Avery*, 8 C. & P. 596.

Signing a wrong christian name to the person whose will a false instrument purports to be, is a forgery. *Rea v. Fitzgerald*, 1 Leach, C. C. 20; 2 East, P. C. 953.

Indictment.—An indictment for forging a paper writing purporting to be the will of A. is good. *Rea v. Birch*, 2 W. Bl. 790; 1 Leach, C. C. 79; 2 East, P. C. 980.

— **Joint Indictment—Separate Acts.**—Three were jointly charged with procuring other persons to utter a forged will. The only evidence for the prosecution was of separate acts, at separate times and places, done by each of the persons charged as accessories. At the end of that evidence one of them pleaded guilty:—Held, that the other two might, notwithstanding, be convicted. *Reg. v. Barber*, 1 C. & K. 442.

Evidence—Identity.—On an indictment for forging a seaman's will, the muster-book of the Navy Office is good evidence to prove the identity of the supposed testator. *Rea v. Rhodes*, 1 Leach, C. C. 24; *S. P.*, *Rea v. Fitzgerald*, 1 Leach, C. C. 20; 2 East, P. C. 953.

— **Validity.**—On an indictment for forging a will, the probate of that will unrepealed is not conclusive evidence of its validity, so as to be a bar to the prosecution. *Rea v. Buttery*, R. & R. C. C. 342; *S. P.*, *Rea v. Gibson*, R. & R. C. C. 343, n.

— **Intent to Defraud.**—In an indictment for forging a will, an intent to defraud the heir-at-law was charged in one count, and in another an intent to defraud persons to the jurors unknown. The only one found guilty was the son of the testator, whose will was alleged to be forged. No evidence was given that the testator had been previously married, or left any other children, but one of the witnesses stated that he had heard a report that the deceased had left another son by a former wife:—Held, that there was no evidence of an intention to defraud any one, to justify a conviction. *Reg. v. Tynley*, 1 Den. C. C. 319; 18 L. J., M. C. 36; *S. C.*, nom. *Reg. v. Tufts*, 3 Cox, C. C. 160.

— **Solicitor—Privilege.**—A., an attorney, was employed by B., as his solicitor, to put out money upon mortgage. C. applied to A. to procure him the advance of money on mortgage, and to act as his solicitor in procuring it. C. stated to A. that he was the owner of certain freehold lands, and produced a forged will in proof of his title, which he placed in the hands of A. B. advanced the money, A. acting as his solicitor, by preparing the mortgage-deeds:—Held, that, on the trial of C. for uttering the forged will, A. was bound to produce the will, and also to give evidence of what C. said to him

as to the advance of the money. *Reg. v. Avery*, 8 C. & P. 596.

Quære, whether a forged document intrusted by the prisoner to an attorney, as an attorney, can be produced on the trial for forgery. *Reg. v. Tylney, supra*.

A forged will had been sent to an attorney with some title-deeds ostensibly for the purpose of asking his advice upon them, but really that he might see the will and act upon it. The will being produced at the trial by the attorney, the prisoner's counsel objected to the reading of it on the ground that it was a privileged communication, and the objection was overruled at the time, and afterwards on a case reserved. *Reg. v. Hayward*, 2 Cox, C. C. 23; 2 C. & K. 234.

The prisoner was indicted for forging a will. The forged instrument had been given to an attorney by the prisoner ostensibly for professional purposes, but, in the opinion of the judge, with some very different object. On objection that it was a privileged communication, and therefore could not be read:—Held, invalid. *Reg. v. Jones*, 1 Den. C. C. 166.

Upon the trial of an indictment for forging the will of one W., it was proved that the prisoner's wife, by his desire, took another will purporting to be the will of W., also forged, to a solicitor, and asked him to advance money on mortgage of the property which passed under the will of her father W.; that the will being left with the solicitor and discovered by him to be a forgery, he made an exact copy of it and then returned it to the prisoner. What the wife stated to the solicitor was afterwards communicated to the prisoner. The solicitor stated that he was not then acting as the prisoner's attorney, that he made no charge for the interview, but that if he had found the security sufficient he should have advanced the money. Notice was given to the prisoner to produce that will, and upon its non-production the copy taken by the solicitor was tendered and received:—Held, that the interview between the solicitor and the prisoner's wife was not privileged as a confidential communication, and that the conversation which then took place, and the copy of the will, were both admissible. *Reg. v. Farley*, 2 Cox, C. C. 72; 2 C. & K. 313; 1 Den. C. C. 197.

w. Other Instruments.

Statute.—By 24 & 25 Vict. c. 98, s. 39, *whereby this or by any other act any person is or shall hereafter be made liable to punishment for forging or altering, or for offering, uttering, disposing of, or putting off, knowing the same to be forged or altered, any instrument or writing designated in such act by any special name or description, and such instrument or writing, however designated, shall be in law a will, testament, codicil, or testamentary writing, or a deed, bond, or writing obligatory, or a bill of exchange, or a promissory note for the payment of money, or an indorsement on or assignment of a bill of exchange or promissory note for the payment of money, or an acceptance of a bill of exchange, or an undertaking, warrant, order, authority, or request for the payment of money, or an indorsement on or assignment of an undertaking, warrant, order, authority, or request for the payment of money, within the true intent and meaning of this act, in every such case the person forging or altering such instrument or*

writing, or offering, uttering, disposing of, or putting off such instrument or writing, knowing the same to be forged or altered, may be indicted as an offender against this act, and punished accordingly. (Former provision, 11 Geo. 4 & 1 Will. 4, c. 66, s. 4.)

False Entry in Banker's Books.—Making a false entry in what purports to be a banker's pass book, with intent to defraud, is a forgery. *Reg. v. Smith*, L. & C. 168.

But where a paying teller of a bank falsely and with intent to defraud, enters in the proof book of the bank, kept by him, a certain sum of money, as assets of the bank, whereas the assets do not amount to that sum, he is not guilty of forgery by the law of England. *Winsor, In re*, 6 B. & S. 522; 10 Cox, C. C. 118; 34 L. J., M. C. 163; 11 Jur., N. S. 807; 12 L. T. 307; 13 W. R. 653.

Railway Pass.—The forgery of a railway pass to allow the bearer to pass free on a railway is a forgery at common law. *Reg. v. Boulton*, 2 C. & K. 604.

Report of Seaman's Character.—A master of a ship having made and signed a report of a seaman's character upon his discharge, in the form sanctioned by the Board of Trade, the shipping-master gave the seaman a copy. The seaman went to the prisoner, who, for 2s. 6d., made and delivered to him a fac-simile of the genuine copy of the report, except that the letter "G," which signified "good," was substituted for the letter "M.," which signified "middling."—Held, that the prisoner was guilty of an offence within 17 & 18 Vict. c. 104, s. 176. *Reg. v. Wilson, Dears. & B. C. C. 558*; 27 L. J., M. C. 230; 4 Jur., N. S. 670.

Testimonials as to Character.—Forging testimonials as to character, whereby a situation as a police constable is obtained, is a forgery at common law. *Reg. v. Munn, Dears. & B. C. C. 550*; 7 Cox, C. C. 503; 27 L. J., M. C. 205; 4 Jur., N. S. 464.

Certificate of Service at Sea.—To forge a certificate of service, sobriety and good conduct at sea, with intent to deceive and defraud, is an offence indictable at common law. *Reg. v. Toshack, T. & M. 207*; 1 Den. C. C. 492; 4 Cox, C. C. 38; 13 Jur. 1011.

Indictment.—A count which, without an inducement, charging that the prisoner "did forge a writing, as a certificate of W. N., with intent to deceive and defraud W. P. and others," is good. *Reg. v. Toshack, supra*.

4. OBTAINING PROPERTY UPON FORGED INSTRUMENTS.

By 24 & 25 Vict. c. 98, s. 38, *whosoever, with intent to defraud, shall demand, receive, or obtain, or cause or procure to be delivered or paid to any person, or endeavour to receive or obtain, or to cause or procure to be delivered or paid to any person, any chattel, money, security for money, or other property whatsoever, under, upon, or by virtue of any forged or altered instrument whatsoever, knowing the same to be forged or altered, or under, upon, or by virtue of any*

probate or letters of administration, knowing the will, testament, codicil, or testamentary writing on which such probate or letters of administration shall have been obtained to have been forged or altered, or knowing such probate or letters of administration to have been obtained by any false oath, affirmation, or affidavit, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years, and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. See Reg. v. Adams, 1 Den. C. C. 38.

5. INDICTMENT, EVIDENCE AND PRACTICE.

- a. Parties Indictable.
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a. Parties Indictable.

Principals and Accessories.—By 24 & 25 Vict. c. 98, s. 49, *in the case of every felony punishable under this act, every principal in the second degree, and every accessory before the fact, shall be punishable in the same manner as the principal in the first degree is by this act punishable; and every accessory after the fact to any felony punishable under this act shall on conviction be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement; and every person who shall aid, abet, counsel, or procure the commission of any misdemeanor punishable under this act shall be liable to be proceeded against, indicted, and punished as a principal offender.*

Who are Principals and Accessories.—See ante, col. 26, et seq.

Treasurer of Illegal Trades Union.—A man was indicted for forging a banker's pass book, with intent to defraud. He was treasurer to a trades union, which was an illegal society. It was contended that such a society, having no legal existence, could possess no funds, and, therefore, could not be defrauded:—Held, that the objection of illegality was applicable only to the summary proceedings before magistrates provided by the Friendly Societies Act; but did not extend to deprive the society of its remedy by indictment. *Reg. v. Dodd*, 18 L. T. 89. See *Reg. v. Stainer*, 1 L. R., C. C. 230; 39 L. J., M. C. 54, and 32 & 33 Vict. c. 61.

Secretary of Unenrolled Friendly Society—Part Owner.—The prisoner was the paid secretary of an unenrolled friendly society, of which his wife was a member. He delivered to the society a book on which was indorsed "Savings Bank,

New-street, Huddersfield," and in which was an entry, "1855, Oct. 30, received 40l." It was proved that the entry was a forgery, and that the money had not been paid into the savings bank. The jury having found that the prisoner was guilty of knowingly uttering with intent to deceive the society, and that he had, in fact, defrauded it, it was objected for the prisoner that being the husband of a member he was a part owner, and could not be made criminally liable for defrauding his co-owners:—Held, that the objection was untenable, and that the conviction was right. *Reg. v. Moody*, 9 Cox, C. C. 166; L. & C. 173; 31 L. J., M. C. 156; 8 Jur., N. S. 574; 6 L. T. 301; 10 W. R. 585.

The prisoner was the treasurer, and also a member of an unenrolled friendly society, and it was his duty to pay moneys received into the society's bankers. The prisoner produced to the society a fictitious book, purporting to be the bank pass book, containing entries purporting to vouch that he had paid certain moneys into the bank, and that the bank acknowledged the receipt of them, which book did not truly represent the state of account. The prisoner having at various times drawn out moneys which he had appropriated for his own purpose, the jury found the prisoner guilty of presenting a false account with intent to obtain credit for having paid the moneys into the bank, with a view to obtain other moneys from the society which he might fraudulently appropriate to his own use:—Held, that the prisoner, though a member of the society, might properly be convicted of uttering a forged receipt, with intent, &c. *Reg. v. Smith*, 9 Cox, C. C. 162; L. & C. 168; 31 L. J., M. C. 154; 8 Jur., N. S. 572; 6 L. T. 300; 10 W. R. 583.

b. Form and Contents of Indictment.

Invalidity of Document.—The invalidity of an instrument must appear upon the face of it, in order to found an objection to an indictment for forgery. *Rex v. McIntosh*, 2 East, P. C. 942; 2 Leach, C. C. 883.

Instrument, how Described.—By 24 & 25 Vict. c. 98, s. 42, *in any indictment for forging, altering, offering, uttering, disposing or putting off any instrument, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known, or by the purport thereof, without setting out any copy or fac-simile thereof, or otherwise describing the same, or the value thereof.* (14 & 15 Vict. c. 100, s. 5, and 2 & 3 Will. 4, c. 123, s. 3, former enactments.)

And by s. 43, *in any indictment for engraving or making the whole or any part of any instrument, matter or thing whatsoever, or for using or having the unlawful custody or possession of any plate or other material upon which the whole or any part of any instrument, matter or thing whatsoever shall have been engraved or made, or for having the unlawful custody or possession of any paper upon which the whole or any part of any instrument, matter or thing whatsoever shall have been made or printed, it shall be sufficient to describe such instrument, matter or thing by any name or designation by which the same may be usually known, without setting out any copy or fac-simile of the whole or any part of such instrument, matter or thing.* (Similar to 14 & 15 Vict. c. 100, s. 6.)

In an indictment for forgery, a description to a common intent of the person intended to be defrauded is sufficient. *Rea v. Lovell*, 1 Leach, C. C. 248; 2 East, P. C. 990.

Setting Out.—In an indictment, the words, "in manner and form following, that is to say," do not bind the party to recite the instrument verbatim, nor render a mere formal omission or mistake fatal. *Rea v. May*, 1 Dougl. 193.

Part of Instrument Forged.—If any part of a true instrument is altered, the indictment may lay it to be a forgery of the whole instrument. For every alteration of a true instrument makes it a forgery of the whole. *Rea v. Dawson*, 2 East, P. C. 978; 1 Str. 19.

In Particular Cases.—See preceding sub-heads.

c. Proof of Possession.

Statute.—By 24 & 25 Vict. c. 98, s. 45, *where the having any matter in the custody or possession of any person is in this act expressed to be an offence, if any person shall have any such matter in his personal custody or possession, or shall knowingly and wilfully have any such matter in the actual custody or possession of any other person, or shall knowingly and wilfully have any such matter in any dwelling-house or other building, lodging, apartment, field or other place, open or inclosed, whether belonging to or occupied by himself or not, and whether such matter shall be so had for his own use or for the use or benefit of another, every such person shall be deemed and taken to have such matter in his custody or possession within the meaning of this act.*

Where, on an indictment on 45 Geo. 3, c. 89, s. 6, for knowingly and wittingly having in his possession forged Bank of England notes, it appeared that the prisoner being suspected of having such in his possession was requested by A. to sell him some, which he said he would do, and A. accordingly paid him for them; the prisoner then went out as he said to fetch the notes, but on his return said, "he had put them in an old shoe in a particular place," which he described; A. then went to look for the notes, and the prisoner followed him, but whilst A. was looking for them, the prisoner threw a stone into the place, and said, "there they are;" A., on looking there, found the notes in an old shoe:—Held, that the prisoner had a sufficient possession within the meaning of the statute. *Rea v. Rowley*, R. & R. C. C. 110.

A. took a bank note in the course of his business, which he paid to B.; the note was afterwards stopped at the bank as a forged note, and was brought by an inspector to A., who immediately paid to B. the amount of the note, and refused to give it up to the inspector, insisting on his right to retain it, in order to recover the amount from the person from whom he had received it. The inspector, in the absence of all circumstances of suspicion, is not justified in charging A. before a magistrate with feloniously having the note in his possession, knowing it to be forged, for the purpose of compelling him to give up the note. By possession under the 45 Geo. 3, c. 89, was meant the original possession of a note acquired in an illegal mode, and not a subsequent possession, like the above,

where the original possession was legal. *Brooks v. Warwick*, 2 Stark, 389.

d. Allegation and Proof of Intent to Defraud.

Statute.—By 24 & 25 Vict. c. 98, s. 44, *it shall be sufficient, in any indictment for forging, altering, uttering, offering, disposing of, or putting off any instrument whatsoever, where it shall be necessary to allege an intent to defraud, to allege that the party accused did the act with intent to defraud, without alleging an intent to defraud any particular person; and on the trial of any such offence it shall not be necessary to prove an intent to defraud any particular person, but it shall be sufficient to prove that the party accused did the act charged with an intent to defraud.* (Similar former enactment, 14 & 15 Vict. c. 100, s. 8.)

Indictment—Some Person.—Since 14 & 15 Vict. c. 103, s. 8, there must be proof of an intent to defraud some person, in order to support the indictment for forgery, though it need not be alleged that it was done with intent to defraud a particular person. *Reg. v. Hodgson*, Dears. & B. C. C. 3; 25 L. J., M. C. 78; 2 Jur., N. S. 453.

It is sufficient, upon an indictment for forgery and uttering a bond, to lay the intent generally to defraud; and the prisoner may be convicted, although it does not appear that he had any intention ultimately to defraud the party whose signature he had forged, he having defrauded the party to whom he uttered the instrument. *Reg. v. Trenfield*, 1 F. & F. 43.

Manner in which Fraud Effected.—It is only necessary to aver a general intent to defraud A. B., without setting out the manner in which that fraud was to be effected. *Rea v. Powell*, 2 W. Bl. 787; 1 Leach, C. C. 77; 2 East, P. C. 976.

"With Intent."—The words "with intent," in an indictment for forgery, apply to the verb to which prisoner's name is the nominative; therefore, a count which states that the prisoner "did forge" a promissory note for 50*l.*, "on which note is an indorsement as follows, 'C. J.,' with intent to defraud W. R. S.," sufficiently charges that the forged note, and not the indorsement, was the thing by which the prisoner intended to defraud W. R. S. *Rea v. James*, 7 C. & P. 553.

Particular Persons.—Where a forged request for the delivery of goods was addressed in her maiden name to a female, who prior to the date of it had married:—Held, that the party uttering it might properly be convicted, on an indictment charging the intent to be to defraud the husband. *Rea v. Carter*, 7 C. & P. 134.

If a banker authorized to pay a sum of money to three persons in particular, and to them only, pays it to one of them and two strangers, who personate the other two, his liability continues, and the false instrument upon which the money was obtained, may be charged to have been made with intent to defraud them. *Dixon's case*, 2 Lewin, C. C. 178.

Evidence of Intent to Defraud—Inference.—

On the trial of an indictment for uttering a forged bill of exchange, if the jury is satisfied that the prisoner uttered the bill as a true bill, meaning it to be taken as such, and at that time knew it to be forged, they ought to find, as a necessary consequence of law, that the prisoner intended to defraud, and the jury ought to infer the intent to defraud, if they are satisfied on the two other points. *Reg. v. Hill*, 8 C. & P. 274.

If a person, at the time he uttered a bill of exchange with a forged acceptance on it, knew that acceptance to be forged, and meant the bill to be taken as a bill with a genuine acceptance upon it, the inevitable conclusion is, that he intended to defraud. *Reg. v. Cooke*, 8 C. & P. 582.

So, it is a consequence, and almost a consequence of law, that he must intend to defraud the person to whom he pays the bill, and also the person whose name is used; as everything which is the natural consequence of the act must be taken to be the intention of the prisoner. *Ib.*

A jury ought to infer an intent to defraud the person who would have to pay a forged instrument if it was genuine, although from the manner of executing a forgery, or from that person's ordinary caution, it would not be likely to impose on him, and although the object was generally to defraud whoever might take the instrument, and the intention of defrauding in particular the person who would have to pay the instrument if genuine did not enter into the prisoner's contemplation. *Reg. v. Mazagora*, K. & R. C. C. 291.

— **To Defraud Particular Person.**—There must be proof of an intent to defraud some person since 14 & 15 Vict. c. 100, s. 8, in order to support an indictment for forgery, though it need not be alleged that it was done with intent to defraud a particular person. *Reg. v. Hodgson*, Dears. & B. C. C. 3; 25 L. J., M. C. 78; 2 Jur., N. S. 453.

In forgery it is not required, in order to constitute in point of law an intent to defraud, that the party committing the offence should have had present in his mind an intention to defraud a particular person, if the consequences of his act would necessarily or possibly be to defraud any person; but there must at all events be a possibility of some person being defrauded by the forgery. *Reg. v. Marcus*, 2 C. & K. 356.

— **Sufficiency.**—A prisoner asked his employer to give him £l. to buy "settled strikers' acid," to be used in the employer's tanning business, which the prisoner superintended; the employer gave him the money, and about four days after the prisoner delivered to his employer a forged receipt for the £l., which purported to come from a firm of whom the acid had been bought:—Held, that proof of these facts was sufficient evidence of uttering the forged receipt with intent to defraud the employer. *Reg. v. Martin*, 7 C. & P. 549; 1 M. C. C. 483.

Where, on the trial of a prisoner for forging a note, it appeared that he had kept the note in his possession, and never uttered or attempted to make any use of it:—Held, whether the note was made innocently, or with intent to defraud, was for the consideration of the jury, and to be collected from the facts proved. *Reg. v. Crocker*, R. & R. C. C. 97; 2 N. R. 87; 2 Leach, C. C. 987.

The intent to defraud a bank constitutes the offence of feloniously disposing of and putting away counterfeit bank notes, and it is not done away by the circumstance that the notes were furnished by the prisoner in consequence of an application made by an agent employed thereto by the bank, and that they were delivered to him as forged notes, for the purpose of being disposed of by that agent. *Reg. v. Holden*, 2 Taunt. 334.

The fact that the prisoner has given guarantees to his bankers, to whom he paid a forged note, to a larger amount than the note, does not so completely negative an attempt to defraud them as to withdraw the case from the consideration of the jury. *Reg. v. James*, 7 C. & P. 553.

e. Evidence Generally.

In Particular Cases.—*See preceding sub-heads.*

Production of Instrument.—If, on an indictment for forgery being presented to the grand jury, it appears that the forged instrument cannot be produced, either from its being in the hands of the prisoner, or from any other sufficient cause, the grand jury may receive secondary evidence of its contents. *Reg. v. Hunter*, 3 C. & P. 591.

On an indictment for forgery being presented to the grand jury, a witness declined to produce certain deeds before them:—Held, that, if the deeds formed a part of the evidence of the witness's title to his own estate, he was not compellable to produce them, but that, if they did not, the grand jury might compel their production. *Ib.*

— **Secondary Evidence of.**—On an indictment for uttering a forged deed, it appeared that the deed alleged to have been forged was produced in evidence by the prisoner's attorney on the trial of an ejectment, in which the prisoner was lessor of the plaintiff; and that after the trial, it was returned to the prisoner's attorney:—Held, that, if the prisoner did not produce the deed, he having had notice to produce it, secondary evidence might be given of its contents, without calling his attorney to prove what he had done with the deed. If, as secondary evidence of the contents of the deed, the draft is given in evidence, and in the draft words are abbreviated, which, in the setting out of the deed in the indictment, are put in words at length, it will be for the jury to say whether they think that the words abbreviated in the draft were inserted at length in the deed itself. *Reg. v. Hunter*, 4 C. & P. 128.

— **Notice to Produce.**—If a forged deed is in the possession of a prisoner, who is indicted for forging it, the prosecutor is not entitled to give secondary evidence of its contents, unless he has, a reasonable time before the commencement of the assizes, given the prisoner notice to produce it; and a notice given to the prisoner during the assizes is too late; but if the prisoner has said that he has destroyed the deed, no notice to produce it will be necessary. *Reg. v. Haworth*, 4 C. & P. 254.

A man was indicted for forging a bank note of a banking company. The note was not produced at the trial, but secondary evidence thereof was given, there not having been any notice to

produce the original:—Held, that secondary evidence was inadmissible in the absence of notice to produce the original. *Reg. v. Fitzsimons*, 4 Ir. R., C. L. 1; 18 W. R. 763.

— **Evidence of Loss.**—If the forged instrument is not produced at the trial, the best proof that can be given of its loss or destruction must be adduced before a copy may be used as secondary evidence. *Reg. v. Hall*, 12 Cox, C. C. 159.

Production of Documents—Privilege of Solicitor.—Quære, whether a forged document intrusted by the prisoner to an attorney, as an attorney, can be produced on the trial for the forgery. *Reg. v. Tynney*, 1 Den. C. C. 319; 18 L. J., M. C. 36. *And see cases ante*, col. 273.

Document not Stamped.—On an indictment for forging a bill of exchange the bill may be given in evidence, although it is not stamped. *Rea v. Hawkeswood*, 1 Leach, C. C. 257; 2 East, P. C. 955; 2 T. R. 606, n.; S. P., *Rea v. Morton*, 2 East, P. C. 955; 1 Leach, C. C. 259, n.; S. P., 33 & 34 Vict. c. 97, s. 17.

Admissibility to Implicate—Letter written by Prisoner to Third Person.—In a case of forging and uttering a forged bill, a letter written by the prisoner to a third person, saying that such person's name is on another bill, and desiring him not to say that that bill is a forgery, is receivable in evidence to shew guilty knowledge; but the jury ought not to consider it as evidence that the other bill is forged, unless such bill is produced, and the forgery of it proved in the usual way. *Rea v. Forbes*, 7 C. & P. 224.

— **Deposition or Examination of Prisoner.**—A. was charged with a forgery, and B. was examined on oath before the magistrate as a witness against A.; after this B. was himself charged with a different forgery:—Held, that the deposition of B. was evidence against him on his trial for the forgery, notwithstanding it was taken on oath. *Rea v. Haworth*, 4 C. & P. 254.

The examination of a person taken on oath as a witness before Commissioners of Bankruptcy, is admissible against him on a charge of forgery, he having been cautioned and allowed to elect what questions he would answer. *Reg. v. Wheeler*, 2 Lewin, C. C. 157; 2 M. C. C. 45.

— **Letter from Prisoner's Brother after Apprehension.**—On an indictment for forging a bank note, a letter purporting to come from the prisoner's brother, and left by the postman, pursuant to its direction, at the prisoner's lodgings, after he was apprehended and during his confinement, but never actually in his custody, cannot be read in evidence against him on his trial. *Rea v. Huot*, 2 Leach, C. C. 820.

Extraneous Evidence that Document Invalid.—Where the instrument forged is legal on the face of it, the prisoner may be legally convicted, although it appears from extraneous evidence that the forged instrument would not have been valid in law. *Reg. v. Pike*, 2 M. C. C. 70; 3 Jur. 27.

Original Entry must be Produced.—Upon an indictment for forging a cheque for 60*l.* 10*s.*, evi-

dence of the number of the notes in which it was paid was rejected in consequence of the original entry not being forthcoming at the trial. *Reg. v. Harvey*, 11 Cox, C. C. 546.

Admissibility of Writing to Compare with Forgery.—Copy books found at the prisoner's house containing writing by the prisoner, and produced by a policeman, cannot be received in order to compare with the forged cheque. *Id.*

On an indictment for forgery, it appeared that the prisoner, on the discovery of the forgery, being suspected, was asked to write his name, for the purpose of comparison, and did so:—Held, that the signature was not admissible on the part of the prosecution for that purpose. *Reg. v. Aldridge*, 3 F. & F. 781.

Evidence of Knowledge.—Uttering a forged order for the payment of money under a false representation is evidence of knowing it to be forged. *Rea v. Sheppard*, 1 Leach, C. C. 226; 2 East, P. C. 967; R. & R. C. C. 169.

— **Of Forgery.**—Where a prisoner utters an instrument with a forged indorsement or other writing, and a short time previously the instrument is shewn to have been in his possession without such indorsement, there is some evidence of forgery, although there is no proof of the indorsement being in the prisoner's handwriting, or if it is even shewn that he is unable to write. *Reg. v. James*, 4 Cox, C. C. 90.

Statements of Prisoner as to other Documents.—On the trial of an indictment for forgery of the acceptance of a bill of exchange, evidence of what the prisoner said respecting other bills of exchange which are not in evidence, is not admissible. *Reg. v. Cooke*, 8 C. & P. 586. But see *Reg. v. Brown*, 2 F. & F. 559.

Evidence of other Offences.—L. was indicted for feloniously having in his possession a lithographic stone, on which was engraved a portion of a Dutch coupon. A second lithographic stone was found in his lodgings, in respect of which another indictment had been preferred against him:—Held, that it was competent for the prosecution to give evidence on the trial of the first indictment of what was on the second stone. *Reg. v. Zeigert*, 10 Cox, C. C. 555.

f. Witnesses.

Who should be Produced.—To prove the forging of a bank note, it is not necessary that the signing clerk at the bank should be produced, if witnesses acquainted with his handwriting state that the signature to the note is not in his handwriting. *Anon.*, R. & R. C. C. 378.

On an indictment for uttering a forged will, which together with writings in support of it, was suggested to have been written over pencil marks which had been rubbed out, the evidence of an engraver, who has examined the paper with a mirror, and traced the pencil marks, is admissible on the part of the prosecution. *Reg. v. Williams*, 8 C. & P. 434.

On an indictment for uttering a forged cheque in the name of J. W., on Messrs. C. G. & Co., who were army agents and bankers, evidence by a clerk in the former department that he did not know any customer named J. W., and that he

had been told by the other clerks that there was not any such customer in the banking department, is sufficient on the part of the prosecution to call upon the prisoner to shew that there was in fact such a person as J. W. having an account with Messrs. C. G. & Co., and, in the absence of such proof, is sufficient by itself for the jury. *Reg. v. Brannan*, 6 C. & P. 326.

g. Jurisdiction to Try.

Statute.—By 24 & 25 Vict. c. 98, s. 41, *if any person shall commit any offence against this act, or shall commit any offence of forging or altering any matter whatsoever, or of offering, uttering, disposing of, or putting off any matter whatsoever, knowing the same to be forged or altered, whether the offence in any such case shall be indictable at common law, or by virtue of any act passed or to be passed, every such offender may be dealt with, indicted, tried, and punished, in any county or place in which he shall be apprehended or be in custody, in the same manner in all respects as if his offence had been actually committed in that county or place; and every accessory before or after the fact to any such offence, if the same be a felony, and every person aiding, abetting, or counselling the commission of any such offence, if the same be a misdemeanor, may be dealt with, indicted, tried, and punished, in any county or place in which he shall be apprehended or be in custody, in the same manner in all respects as if his offence, and the offence of his principal, had been actually committed in such county or place. (Similar to 11 Geo. 4 & 1 Will. 4, c. 66, s. 24, repealed.)*

By s. 50, *all indictable offences mentioned in this act which shall be committed within the jurisdiction of the Admiralty of England or Ireland shall be deemed to be offences of the same nature and liable to the same punishments as if they had been committed upon the land in England or Ireland, and may be dealt with, inquired of, tried, and determined in any county or place in England or Ireland in which the offender shall be apprehended or be in custody, in the same manner in all respects as if they had been actually committed in that county or place; and in any indictment for any such offence, or for being an accessory to such an offence, the venue in the margin shall be the same as if the offence had been committed in such county or place, and the offence shall be averred to have been committed on "the high seas;" provided that nothing herein contained shall alter or affect any of the laws relating to the government of her Majesty's land or naval forces.*

By 5 & 6 Vict. c. 38, *the offence of forgery cannot be tried at quarter sessions.*

Evidence.—On an indictment for forgery at common law, it is not necessary to prove that the party charged was in custody before the time of the trial, in order to give jurisdiction under 11 Geo. 4 & 1 Will. 4, c. 66, s. 24. *Reg. v. Smythies*, T. & M. 190; 1 Den. C. C. 498; 4 Cox, C. C. 94; 19 L. J., M. C. 31; 13 Jur. 1034.

A verdict, in such case, of "guilty of forging, but there is no evidence of its having been done within the jurisdiction of the court," amounts to a conviction. *Id.*

Averment as to.—Where a prisoner was tried

for forgery in the county where he was in custody, under 11 Geo. 4 & 1 Will. 4, c. 66, s. 24, the forgery might be alleged to have been committed in that county, and there need not be any averment that the prisoner was in custody there. *Reg. v. James*, 7 C. & P. 553.

h. Election of Forgeries.

Minor Offence, where Facts sufficient to Convict on Greater.—The Bank of England having preferred several indictments for uttering and having in possession, in respect of the same note, and having elected to proceed on the indictment for having in possession:—Held, that although facts sufficient to support the capital charge were made out in proof, an acquittal for the minor offence ought not to be directed, because the whole of the minor offence was proved, and it did not merge in the larger. *Anon.*, R. & R. C. C. 378.

The bank might elect to proceed on an indictment for a lesser offence, although an indictment had been found for a capital charge in respect of forging the same note. *Id.*

When Prosecutor bound to Elect.—On a count for uttering several forged receipts, the court will not put the prosecutor to his election on which receipt to proceed, if they be all uttered at the same time. *Reg. v. Thomas*, 2 East, P. C. 934.

i. Punishment.

(24 & 25 Vict. c. 98, ss. 47, 48).

j. Costs of Prosecution.

By 24 & 25 Vict. c. 98, s. 54, *the court before which any indictable misdemeanor against this act shall be prosecuted or tried may allow the costs of the prosecution in the same manner as in cases of felony; and every order for the payment of such costs shall be made out, and the sum of money mentioned therein paid and repaid, upon the same terms and in the same manner in all respects as in cases of felony.*

k. Power to seize Forged Instruments.

(24 & 25 Vict. c. 98, s. 46.)

Right to detain and impound Instruments, on the Ground of being Forged.—A bill of costs of an attorney having been referred to one of the prothonotaries of the common pleas of Lancaster for taxation, the client produced and handed to the prothonotary two receipts which it was alleged contained false entries, and the prothonotary was requested to retain them. It appearing that the attorney was not on the roll, he declined to tax the bill, or to return the receipts. Ten days afterwards the client brought an action of trover against the prothonotary to recover the receipts. No proceedings had been taken by any parties with reference to the supposed fraudulent contents:—Held, that the prothonotary was justified in withholding the receipts, for a limited time; and although he could not ultimately detain them from the owner, yet an action brought only ten days after he received them was prematurely brought. *Miller v. Paget*, 23 L. T. 365.

In an action by payee against makers of a cheque, in which they pleaded that they did not make the cheque, their signatures were admitted, but it was opened for the defendants, that the defendants, who were directors of a company of which the plaintiff was secretary, kept blank cheques, with their signatures to them, in a book, and that this cheque was one of those filled up by the plaintiff without authority. The judge intimated that this would be a forgery, even though the whole sum the cheque was drawn for was due to the plaintiff. The plaintiff's counsel elected to be nonsuited, and the judge ordered the cheque to be impounded in the hands of the associate, but would not order the plaintiff to be taken into custody, as no evidence of any forgery had been given, and the whole matter rested upon the statement of counsel only. *Flower v. Shaw*, 2 C. & K. 703; *S. P.*, *Wright's case*, 1 Lewin, C. C. 135.

B. UTTERING FORGED INSTRUMENTS.

1. *What is an Uttering.*
2. *Evidence and Trial*, 289.

1. WHAT IS AN UTTERING.

Genuine Indorsement.—The uttering a bill with a genuine indorsement, under pretence of being the indorser, will not subject the party to an indictment as for uttering a forged instrument, as it is only a misdemeanor. *Rea v. Hevey*, R. & R. C. C. 407, n.; 2 East, P. C. 556, 856; 1 Leach, C. C. 229.

Bill to Prisoner's Order—No Indorsement.—Forging a bill payable to the prisoner's own order, and uttering it without an indorsement as a security for a debt, is a complete offence, if done with a fraudulent intent, the bill having been issued to obtain credit, though as a pledge only. *Rea v. Birkett*, R. & R. C. C. 86.

Bill to Drawer's Order—No Indorsement.—Uttering a forged bill of exchange, purporting to be payable to the drawer's order, with intent to defraud, is a complete offence, although there is no indorsement upon it importing to be the drawer's. *Rea v. Wieke*, R. & R. C. C. 149.

Statute Passed after Forgery and before Uttering.—On an indictment for forging a scrip receipt, it must appear that the receipt was signed subsequently to the passing of the statute on which the indictment is founded; but though signed before, yet, if it was uttered after the passing of the act, the prisoner may be convicted on the count for uttering it, knowing it to be forged. *Rea v. Reeves*, 2 Leach, C. C. 808, 814.

Mere Shewing Instrument.—Shewing a man an instrument, the uttering of which would be criminal, though with an intent of raising a false idea in him of the party's substance, is not an uttering. *Rea v. Shukard*, R. & R. C. C. 200.

If A. exhibits a forged receipt to B., a person with whom he is claiming credit for it, this is an uttering, although A. refuses to part with the possession of the paper out of his hand. *Reg. v. Radford*, 1 C. & K. 707; 1 Den. C. C. 59.

Leaving Document Sealed up.—Nor will the

shewing of a forged receipt and leaving it afterwards, sealed up, with the person to whom it was shewn under cover, that he may take charge of it, as being too valuable to be carried about, be an uttering. *Rea v. Shukard*, R. & R. C. C. 200.

Delivery of, to Carrier in Box.—Delivering a box containing forged stamps, to the party's own servant, that he may carry them to an inn, to be forwarded by the carrier to a customer in the country, is an uttering. *Rea v. Collicott*, R. & R. C. C. 212; 2 Leach, C. C. 1048; 4 Taunt. 300.

Application to Purchase Forged Notes.—The offence of disposing and putting away forged bank notes is complete, although the person to whom they are disposed was an agent for the bank to detect utterers, and applied to the prisoner to purchase forged notes, and had them delivered to him as forged notes, for the purpose of disposing of them. *Rea v. Holden*, R. & R. C. C. 154; 2 Leach, C. C. 1019; 2 Taunt. 334.

Presenting to Bank Clerk—Alteration afterwards.—If a person presents a bill of exchange for payment, with a forged indorsement upon it of a receipt by the payee, and the clerk to whom he presents it objects to a variance between the spelling of the payee's name in the bill and the indorsement, upon which the person alters the indorsement into a receipt by himself for the payee: semble, that the act of presenting the bill to the clerk previously to his objection is sufficient to constitute the offence of uttering the forged indorsement. *Rea v. Arscott*, 6 C. & P. 408.

Note Given as a Specimen.—If an engraving of a forged note is given to a party as a pattern or as a specimen of skill, the party giving it not intending that the particular note should be put in circulation, it is not an uttering. *Rea v. Harris*, 7 C. & P. 428.

By Third Person.—Upon proceedings before justices against a pawnbroker, under 39 & 40 Geo. 3, c. 99, s. 14, he delivering to them, through the hands of his attorney, a false and fabricated duplicate of goods that had been pledged with him, is an uttering by the pawnbroker. *Reg. v. Fitchie*, Dears. & B. C. C. 175; 7 Cox, C. C. 257; 26 L. J., M. C. 90; 3 Jur., N. S. 419.

Bill of Fictitious Person.—Putting off a bill of exchange of A., an existing person, as the bill of exchange of A., a fictitious person, is a felonious uttering of the bill of a fictitious drawer. *Reg. v. Nesbitt*, 6 Cox, C. C. 320.

Giving Document to be Handed to Another.—If A. gives to B. a forged certificate of a pretended marriage between himself and B., in order that B. may give it to a third party, A. is not guilty of an uttering. *Reg. v. Heywood*, 2 C. & K. 352.

If a person knowingly delivers a forged bank-note to another, who knowingly utters it accordingly, the prisoner, who delivered such note to be put off, might have been convicted of having disposed and put away the same, on 15 Geo. 2, c. 13,

s. 11. *Rea v. Palmer*, R. & R. C. C. 72; 1 N. R. 96; 2 Leach, C. C. 978.

Pass of Discharged Prisoner.—A woman who applies to a relieving officer for money on a forged pass of a discharged prisoner, purporting to have been given under 5 Geo. 4, c. 85, and produces it to such officer, may be convicted of uttering a forged warrant and order for the payment of money, although the forged pass direct the money mentioned in it to be paid to "William Henry," on his giving a receipt. *Reg. v. McConnell*, 1 C. & K. 371; 2 M. C. C. 298.

Uttering Receipts to get Credit therefrom.—A. applied to B. to lend him money, and gave him the name of the defendant as a surety. B. went to him, and, to satisfy himself of his respectability, asked to see his receipts for rent and taxes. The defendant placed in the hands of B., for his inspection, three documents purporting to be receipts for poor rates, with the intent to induce B. to advance money to A. One of these receipts was forged. B. inspected the documents, and then returned them to the defendant:—Held, that the defendant might be convicted of uttering a forged receipt, and that, for the purpose of rendering him liable, it was not necessary that the receipt should be used to get credit upon it by its operating as a receipt, but that it was sufficient if he used it fraudulently to obtain money by means of it. *Reg. v. Tom*, 6 Cox, C. C. 1; 2 Den. C. C. 475; 16 Jur. 746.

Held, also, that it was immaterial whether the money to be obtained by means of it was for himself or for any other person. *Ib.*

The prisoner, servant of A., applied to B. for payment of 17s. due from B. to A. B. refused to pay it without A.'s receipt. The prisoner went away and returned with a document, as follows:—"Received from Mr. Bendon, due to Mr. Warman, 17s. Settled." Whereupon B. paid the debt:—Held, a question for the jury whether the prisoner tendered the receipt as the handwriting of A., which would make him liable on this indictment; or as his own, which would make his act a false pretence. *Reg. v. Inder*, 1 Den. C. C. 325; 2 C. & K. 635.

A. was treasurer of an unenrolled friendly society, and it was his duty to receive contributions from the members, and pay them into a bank in his own name for the benefit of the society. At meetings of the society he produced to the members a fictitious pass book, purporting to vouch for the payment of moneys by him into the bank. This book did not truly represent the state of the account between himself and the bank. He also at various times drew out moneys which he had paid in, and appropriated them to his own use. He was convicted upon an indictment which charged him with uttering a receipt for money, the jury finding that he presented a false account, with intent thereby to obtain credit for having duly paid into the bank the various sums which he had received, and to be continued in his office of treasurer with a view to obtain other moneys from the society, which he might fraudulently appropriate to his own use:—Held, that the conviction was right. *Reg. v. Smith*, 9 Cox, C. C. 162; L. & C. 168; 31 L. J., M. C. 154; 8 Jur., N. S. 572; 6 L. T. 300; 10 W. R. 583.

A paid secretary of an unenrolled friendly society, of which his wife was a member, was

directed by the society to pay into a savings bank 40l., given him for that purpose. At the next meeting he handed in a book, indorsed "Savings Bank, New-street, Huddersfield," and on which was written, "1855, Oct. 30, received 40l." The indorsement on and entry in the book were forgeries, and the money had not been paid into the bank. He was convicted of uttering this document, knowing it to be forged:—Held, that the conviction was right. *Reg. v. Moody*, L. & C. 173; 9 Cox, C. C. 166; 31 L. J., M. C. 156; 8 Jur., N. S. 574; 6 L. T. 301; 10 W. R. 585.

Conditional.—A conditional uttering of a forged instrument is as much a crime as any other uttering. Where a person gave a forged acceptance, knowing it to be so, to the manager of a banking company where he kept an account, saying, that he hoped this bill would satisfy the bank as a security for the debt he owed, and the manager replied that that would depend on the result of inquiries respecting the acceptance:—Held, a sufficient uttering. *Reg. v. Cooke*, 8 C. & P. 582.

Intent to Defraud is Necessary.—Where a person had made alterations in a diploma of the College of Surgeons, to make it appear to be a document issued by the college to him, and had hung it up in his house, and shewed it to certain persons, it was found, by the case reserved for the court, that he had no intent, in the uttering and publishing, to commit any particular fraud or specific wrong to any individual:—Held, that he could not be convicted of uttering. *Reg. v. Hodgson*, Dears. & B. C. C. 3; 7 Cox, C. C. 122; 25 L. J., M. C. 78; 2 Jur., N. S. 453.

On a charge of uttering a receipt with intent to defraud, the uttering being to the employer, and he appearing to have been indebted to the prisoner at the time, negatives an intent to defraud. *Reg. v. Bradford*, 2 F. & F. 859.

Uttering a forged stock receipt to a person who employed the prisoner to buy stock to that amount, and advanced the money, is sufficient evidence of an intent to defraud that person; and the oath of the person to whom the receipt was uttered, that he believed the prisoner had no such intent, will not repel the presumption of an intention to defraud. *Rea v. Sheppard*, 1 Leach, C. C. 226; 2 East, P. C. 967; R. & R. C. C. 169.

Fraud actually Perpetrated.—Uttering a forged instrument, the forgery of which is only a forgery at common law, is no offence, unless some fraud is actually perpetrated by it; and where in such a case the indictment contained some counts for forging the instrument and others for uttering it, and the defendant was acquitted on the counts for the forgery, and convicted on the counts for the uttering, judgment was arrested. *Reg. v. Boulton*, 2 C. & K. 604.

The forgery of a railway pass to allow the bearer to pass free on a railway, is a forgery at common law; but the uttering of it per se is not a misdemeanor. *Ib.*

A person was indicted for forging a testimonial to his character as a schoolmaster, and the indictment also charged him with having uttered the forged document. The jury acquitted him of the forgery, but found him guilty of the uttering with intent to obtain the emoluments of the place of

schoolmaster, and to deceive the prosecutor:—Held, that this finding of the jury amounted to an offence at common law, of which the prisoner was properly convicted. *Reg. v. Sharnman*, Dears. C. C. 285; 6 Cox, C. C. 212; 23 L. J., M. C. 51; 18 Jur. 157.

Joint Uttering.—Where three were jointly indicted for feloniously using plates, containing impressions of forged notes:—Held, that the jury must select some one particular time after all three had become connected, and must be satisfied, in order to convict them, that at such time they were all either present together at one act of using, or assisted in such one act, as by two using, and one watching at the door to prevent the others being disturbed, or the like; and that it was not sufficient to shew that the parties were general dealers in forged notes, and that at different times they had singly used the plates, and were individually in possession of forged notes taken from them. *Reg. v. Harris*, 7 C. & P. 416.

V. was indicted for uttering forged post-office money orders. H. and S. were joined in the indictment and convicted. They had gone to the shop where V. uttered the orders, remaining outside in a cab so situated that they could not see or be seen by the people in the shop. They had previously accompanied V. to another shop, where he failed to get change for the orders, and they assisted him in taking away the goods obtained at the second shop:—Held, that though they were not in the cab for the purpose of taking part in aiding or assisting in the actual act of uttering, they were rightly convicted. *Reg. v. Vanderstein*, 16 Ir. C. L. R. 574; 10 Cox, C. C. 146.

2. EVIDENCE AND TRIAL.

Guilty Knowledge—Evidence of other Utterings.—The prisoner, who had been stamp distributor of the Queen's Bench Division, was indicted for uttering three law forms with forged stamps impressed thereon. The forms which were the subject of the indictment were those ordinarily used by the stamp distributor of the Exchequer Division, and bore his particular mark. It sometimes happens that, in the process of stamping, a second sheet of paper is inadvertently placed under the sheet which is brought into contact with the die; this second sheet receives an impression, but of a fainter character, and one which can be distinguished from the impression made on the outer sheet. These second sheets are termed "blinds," and are never supposed to be issued by the stamping department, or regarded as genuine stamps. The principal defence was that when the prisoner sent to purchase genuine stamps at the Custom House, his messenger, either deceived by the guilty party or in collusion with him, brought back these "blinds," which were then innocently sold by the prisoner. To meet this defence, counsel for the crown proposed to give in evidence several documents from the files of the Queen's Bench Division, which were on forms headed with the printed device used on the prisoner's forms, and date-stamps on which were proved by the evidence of an expert to have been made with the same instrument as the forged stamps on the documents the subject of the indictment; and in the prisoner's office implements were found suitable for the forging

of such stamps. These documents were submitted by the learned judge to the jury, notwithstanding that the prisoner's counsel objected to their reception on the ground that there was not sufficient evidence to connect the prisoner with them:—Held (Fitzgerald, B., and Barry, J., dissenting), that there was sufficient evidence to connect the prisoner with these documents, and of their having been uttered by him; and that they were rightly submitted to the jury as evidence of guilty knowledge in uttering the stamped instruments which were the subject-matter of the indictment. *Reg. v. Colelough*, 15 Cox, C. C. 92; 10 L. R., 1r. 241.

On a trial for uttering a forged note scienter, the admissibility of evidence of other utterings is not affected by *Reg. v. Oddy*, 2 Den. C. C. 264. *Reg. v. Green*, 3 C. & K. 209.

Upon an indictment for disposing of and putting away a forged bank note, knowing it to be forged, the prosecutor may give evidence of other forged notes having been uttered by the prisoner, in order to prove his knowledge of the forgery. *Reg. v. Wylie*, 1 N. R. 92; *S. C.*, nom. *Reg. v. Whaley*, 2 Leach, C. C. 983; *S. P.*, *Reg. v. Tattersall*, 1 N. R. 93, n.

So proof that a prisoner had in his possession other bills or notes of the same kind is admissible. *Reg. v. Hough*, R. & R. C. C. 120.

So proof that he pointed out where such others were hidden. *Reg. v. Rowley*, Bayl. Bills, 448.

If the possession of other forged instruments is offered in evidence to prove a guilty knowledge, there must be regular evidence that such instruments were forged; proof that the prisoner returned the money on such an instrument, and received the instrument back, is not sufficient without producing the instrument or duly accounting for its non-production. *Reg. v. Millard*, R. & R. C. C. 245.

Upon an indictment for uttering a forged note, evidence is admissible of the prisoner's having, at a prior time, uttered another forged note of the same manufacture; and also that other notes of the same fabrication had been found on the files of the bank, with his handwriting on the back of them, in order to shew his knowledge that the note mentioned in the indictment was a forgery. *Reg. v. Ball*, R. & R. C. C. 132; 1 Camp. 324; 2 Leach, C. C. 987, n.

If a second uttering is made the subject of a distinct indictment, it cannot be given in evidence to shew a guilty knowledge in a former uttering. *Reg. v. Smith*, 2 C. & P. 633.

On an indictment for uttering forged Polish notes, conversations with the prisoners respecting the forgery and circulation of forged Austrian notes are admissible to prove the scienter. *Reg. v. Harris*, 7 C. & P. 429.

On an indictment for engraving or uttering notes of a foreign prince, evidence of a recent engraving or uttering notes of another foreign prince is admissible, in proof of a guilty knowledge. *Reg. v. Balls*, 1 M. C. C. 470.

In a prosecution for forging and uttering a receipt, knowing it to be forged, it was proposed to give in evidence other acts of forgery by the prisoner, against the same prosecutor, as evidence of guilty knowledge, on the count for uttering. It was objected that they could only be given in evidence if they were forgeries, and there was no evidence of that without first asking the jury to find them so, which was not the issue they had to try:—Held, that the whole evidence must be

confined to the document they were proceeding upon, without at all trenching upon the rules as to uttering in other cases. *Reg. v. Moore*, 1 F. & F. 73.

Upon an indictment for uttering a forged bill, the previous uttering of other bills forged in other names may be given in evidence in proof of guilty knowledge. *Reg. v. Salt*, 3 F. & F. 834.

It is impracticable to lay down any general rule as to the time within which such previous uttering must have taken place, in order to be admissible. *Id.*

In order to shew a guilty knowledge, on an indictment for uttering forged bank notes, evidence of another uttering, subsequently to the one charged, is not admissible, unless the latter uttering was in some way connected with the principal case, or it can be shown that the notes were of the same manufacture; for only previous or contemporaneous acts can shew *quo animo* a thing is done. *Reg. v. Taverner*, Car. C. L. 195.

Sufficiency for Conviction.—A bill was addressed to Messrs. Williams & Co., bankers, Birchin-lane, London, and there might, at that time, have been a 3 on the lower left-hand corner of the bill; the prisoner was asked at the time whether the acceptors were Williams, Birch & Co., and his answer imported that they were. Williams, Birch & Co. lived at No. 20, Birchin-lane, and it was not their acceptance. There were no other known bankers in London using the style of Williams & Co.; but at No. 3, Birchin-lane, the name of "Williams & Co." was on the door; and some bills addressed to Messrs. Williams & Co., bankers, Swansea, had been accepted, payable at No. 3, and had been paid there. There was no evidence who lived at No. 3, but another bill of the same tenor as that in question, drawn by the prisoner, had been accepted there:—Held, that on these facts he was improperly convicted of uttering a forged acceptance, knowing it to be forged. *Reg. v. Watts*, R. & R. C. C. 436; 3 B. & B. 197; 6 Moore, 442.

On a charge of uttering an order or a request for the delivery of goods, proof of the receipt of goods by the prisoner is no evidence of the uttering. *Reg. v. Johnson*, 6 Cox, C. C. 18.

Election by Prosecutor as to what Facts he Relies on.—On an indictment for uttering a forged bill of exchange, the judge will hear evidence of all the facts which form parts of one continued transaction relating to the uttering of the bill, and will not press the prosecutor to elect what particular fact he means to rely upon as the uttering, till the case for the prosecution is closed. *Reg. v. Hart*, 7 C. & P. 652.

Venue.—Putting a letter into the Manchester post-office, containing a forged instrument, is an uttering in the county of Lancaster, and the post-mark is evidence of such an uttering. *Perkins's case*, 2 Lewin, C. C. 150.

Jurisdiction.—Uttering in England a forged note, payable in Ireland only, was within the Forgery Acts prior to 11 Geo. 4 & 1 Will. 4, c. 66. *Reg. v. Kirkwood*, 1 M. C. C. 311. [*See now* 24 & 25 Vict. c. 98, s. 41.]

C. EFFECT OF FORGERY.

Liability of Partnership.—A., B. and C. were proprietors of stock as trustees, and C., D. and E. were bankers. C. executed a letter of attorney empowering D. and E. to sell the stock, and forged the signatures of A. and B. The stock was sold and transferred in the books of the Bank of England, to the credit of the buyers, and the produce of the stock was paid into the banking-house of C., D. and E.; C. was afterwards tried and convicted of forging a similar instrument, and executed:—Held, upon an issue directed in chancery (it being part of the order that no objection should be taken that he was interested as a trustee, and a partner in the banking-house), that the money received by the banking-house constituted a debt due from them to the trustees. *Stone v. Marsh*, 6 B. & C. 551; R. & M. 364.

Money had and Received.—A party whose stock has been sold under a forged power of attorney may recover the value as money had and received from the purchaser. *Marsh v. Keating*, 1 Bing. N. C. 198; 1 Scott, 5.

Payment of Cheque.—When a cheque drawn by a customer upon his bankers for a sum of money described in the body of the cheque in words and figures, was afterwards altered by the holder, who substituted a larger sum for that mentioned in the cheque, but in such a manner that no person in the ordinary course of business could observe it, and the bankers paid to the holder the larger sum:—Held, that they could not charge the customer for any amount beyond the sum for which the cheque was originally drawn. *Hall v. Fuller*, 5 B. & C. 750.

Replacing Stock.—Stock of a railway company was standing in the books of the company in the names of two persons, A. and B. B., by a transfer executed by himself, and to which he forged the signature of A., transferred the stock to a third person whose name was substituted upon the register for the names of B. and A. A. died soon afterwards:—Held, that the personal representative of A. had a legal right to call on the company to replace the stock, though the right of action at law was gone. *Midland Railway Company v. Taylor*, 31 L. J., Ch. 336; 6 L. T. 73—H. L.

The owner of railway shares in two companies took certificates from the companies, for which he gave receipts. In so doing he gave his address, in one instance, at the office of a banking company, in the other, at a club. He deposited the certificates with the manager of the bank for safe custody. The manager fraudulently sold the shares, and forged the name of the owner to transfer deeds of the shares. The companies wrote to him informing him of the transfers; and receiving in one instance no answer, and in the other an answer purporting to come from the owner, but in reality forged by the manager, registered the shares. On a bill against one of the companies and the purchaser, praying that the purchaser might be decreed to deliver up the certificate to the owner, that the company might be decreed to cancel the alleged transfer, and the entry of it in their books, to deliver to the owner a stock certificate, and to pay the dividend then due, and all future dividends:—Held, that

he was entitled to the relief prayed, but without prejudice to any question at law or in equity between the co-defendants. *Johnston v. Renton, Johnston v. Parsey*, 9 L. R., Eq. 181; 39 L. J., Ch. 390; 22 L. T. 90; 18 W. R. 284.

Fraudulent Mortgage.]—A son who was heir-at-law to his father, and one of the executors and trustees of his father's will, fraudulently mortgaged some of the testator's property by forging a deed as if he were the absolute owner, his name and his father's name being the same. The co-executors and co-trustees were not cognizant of the transaction.—Held, in an action by them claiming a declaration that the mortgages were void against them, that nothing passed to the mortgages by the forged mortgage deeds, but that as the son had a beneficial interest under the will, his interest passed to them. *Cooper, In re, Cooper v. Vessey*, 20 Ch. D. 611; 51 L. J., Ch. 862; 47 L. T. 89; 30 W. R. 648—C. A. See *Keate v. Phillips*, 18 Ch. D. 560; 50 L. J., Ch. 664; 44 L. T. 731; 29 W. R. 710. *Fow v. Hawks*, 13 Ch. D. 822; 49 L. J., Ch. 579; 42 L. T. 622; 28 W. R. 656.

Estoppel by Conduct.]—A person who knows that a bank is relying upon his forged signature to a bill, cannot lie by and not divulge the fact until he sees that the position of the bank is altered for the worse, but mere silence is insufficient if the position of the bank is not altered. *McKenzie v. British Linen Company*, 6 App. Cas. 82; 44 L. T. 431; 29 W. R. 477—H. L. (Sc.).

Estoppel by Negligence.]—T., the registered holder of five shares in a company, deposited the share certificates with a stockbroker. A forged transfer of the shares to S. and G. having been left with the secretary for registration, together with the share certificates, he, in accordance with the usual custom of business, registered the transfer and removed the name of T. from and placed the names of S. and G. upon the register as holders of the shares, and share certificates were handed to them. B. and G. having, through their broker, bought on the Stock Exchange five shares in the company, S. and G. transferred the shares comprised in the false transfer to B. and G. respectively, and they were registered as the holders of the shares, and share certificates were handed to them.—Held, first, that the company, by giving the certificates, represented that S. and G. were the lawful holders of the shares mentioned in them, intending that persons purchasing the shares should act thereon, and that B. and G. having bona fide acted upon that representation, the company was estopped from denying the truth of it. Held, secondly, that B. and G. were entitled to recover from the company the value of the shares at the time the company refused to recognize them as shareholders, with interest at 4l. per cent. *Bahia and San Francisco Railway Company, In re, Tritton, In re*, 3 L. R., Q. B. 584; 37 L. J., Q. B. 176; 18 L. T. 467; 16 W. R. 862; 9 B. & S. 844.

The plaintiffs, merchants in New York, inclosed in a letter to W. & Co., their correspondents in England, a cheque drawn on Smith & Co., bankers, London, and indorsed by the plaintiffs to W. & Co. The letter was placed with others for the purpose of being posted, but was abstracted, and the cheque was some time after presented to the defendants by C., the cheque

at that time bearing a forged indorsement to C. At the request of C., the defendants obtained cash for the cheque from Smith & Co., and allowed C. to draw for the amount.—Held, there being evidence of negligence in the plaintiffs disentitling them to sue, that they were entitled to recover from the defendants the amount of the cheque, for the property in the cheque never having passed out of the plaintiffs, the defendants were guilty of a conversion, and therefore they were entitled to waive the tort, and hold the proceeds of the cheque to be money received to the plaintiffs' use. Evidence was tendered by defendants, which was rejected, of a practice of sending, besides the letter containing the draft, a letter of advice by the same or another ship; with a view to shew that the plaintiffs in omitting to do so were estopped by their own negligence from recovery.—Held, that such evidence was rightly rejected, for negligence in order to operate as an estoppel must be in the transaction itself, and there was no duty either towards W. & Co., or the general public, east on the plaintiffs to comply with such a practice, which could only be collateral to the transaction. *Arnold v. Cheque Bank; Arnold v. City Bank*, 1 C. P. D. 578; 45 L. J., C. P. 562; 34 L. T. 729; 24 W. R. 759.

Trustees of a charity incorporated by act of parliament, and having a common seal, possessed stock in the public funds, which stock was registered in the Bank of Ireland. The secretary of the trustees was allowed to have the seal in his possession. Five several powers of attorney, prepared in different years, sealed with the seal of the trustees, the due affixing of which seal was attested by witnesses, who (though without any fraudulent intention) attested what was not true, since the seal was affixed by the unauthorized act of the secretary alone, were presented to the bank, and the stock was transferred. The facts were afterwards discovered, and the secretary was indicted and convicted. By a power of attorney duly executed, the trustees then authorized C. to transfer the stock, but the bank refused to make the transfer. An action was brought by the trustees on this refusal; the judge who tried the cause told the jury that if under these circumstances the trustees had so negligently conducted themselves as to contribute to the loss, the verdict must be given for the bank. On exceptions for this direction.—Held, that it was wrong. *Bank of Ireland v. Evans' Charities (Trustees)*, 5 H. L. Cas. 389.

S., wishing to sell certain shares of which he was the owner, was induced by his broker to execute a transfer, leaving a blank for the broker to insert the numbers and description of the shares. The broker fraudulently filled up the blank with the numbers and description of other shares belonging to S., but in a different company, namely, that of the defendants; and passed the transfer as a genuine transfer to a purchaser. By the rules of the defendants' company, it was necessary to produce certificates of the shares before a purchaser's name could be entered on the register as the holder of the shares. The certificates of the shares were kept by S. in a box in the broker's custody. The box was locked, and S. kept the key. The broker, however, managed to get a duplicate key, and stole the certificates, and produced them with the transfer, and the name of the purchaser was registered. In an action by S., claiming damages

and a mandamus to have his name restored to the register in respect of the shares:—Held, that S. had been guilty of no false representation or culpable negligence such as estopped him from charging that the transfer deed was a forgery. *Swan v. North British Australasian Company*, 2 H. & C. 175; 32 L. J., Ex. 273; 10 Jur., N. S. 102; 11 W. R. 862—Ex. Ch. Affirming 7 H. & N. 603; 31 L. J., Ex. 425.

C., the plaintiff in the second action, had been since 1875 the proprietor of certain stock in the London and South-Western Railway Company, P., the confidential clerk of C., feloniously got possession of a certificate for 1,000l. of the stock, and sold that amount. Subsequently he forged C.'s name to the transfer, and forwarded it, together with the certificate, to the brokers of Major W., the plaintiff in the first action, who had purchased the stock from T., a member of the Stock Exchange. The brokers forwarded the transfer and the certificate to the company for registration. The company thereupon wrote to C. at his usual address, inquiring if the transfer were correct. The letter was intercepted by P., who replied in a way which appeared not quite satisfactory. The company forwarded a second letter, which was also intercepted by P., who gave the company an explanation, with which they were satisfied, and they immediately sent a new certificate to Major W.'s brokers. The fraud was subsequently discovered, and now Major W. sought to recover from the company on the ground that (inter alia) he was entitled to rely upon the certificate of registration, which the company were estopped from questioning, as he, Major W., relying upon it, had so prejudicially altered his position as to bring the case within the authorities upon estoppel. The plaintiff in the second case sought to have his name replaced in the books of the company as the owner of the said stock:—Held, that the company, having issued the certificate without any want of care and bona fide, were not estopped from contesting its validity. *Waterhouse v. London and South-Western Railway Company*, *Coates v. London and South-Western Railway Company*, 41 L. T. 553; 44 J. P. 154.

Held, also, upon the facts, that the judgment must be for the defendants in the first action, and for the plaintiff in the second action with costs. *Ib.*

C. owned stock in a company incorporated under the Companies Act, 1862. His clerk, P., contracted to sell stock in the company to S., who was the nominee of B. In order to carry out the contract, P. forged a transfer from C. to S., which was left by S. at the office of the company for registration. The company sent a letter to C. inquiring whether the transfer was correct: as they received no answer from him they registered the transfer. B. borrowed money from a bank, and by way of security for the loan the stock was transferred by S. at the request of B. to I. as trustee for the bank, and the company registered I. as owner and issued a certificate accordingly. The money borrowed by B. was afterwards repaid by him to the bank, and the stock was held by I. as a bare trustee for B. The forgery was discovered, and the company then refused to acknowledge I. as the holder of the stock. In an action brought by B. and I. to compel the company to recognize their title:—Held, that although I., as trustee for the bank,

might have acquired a good title by estoppel against the company, yet that title ceased when the loan by the bank was paid off, and that no estoppel existed in favour of B. against the company; for B. in contracting, through S., to buy the stock belonging to C., had acted on the faith of the forged transfer, and had not relied upon any act of the company, and by sending the forged transfer to the company had induced them to recognize his nominee as the holder, and that the action would not lie. *Bahia and San Francisco Railway Company, In re* (3 L. R., Q. B. 585); *Hart v. Frontino, &c. Gold Mining Company* (5 L. R., Ex. 111); and *Knights v. Wiffen* (5 L. R., Q. B. 660), discussed. *Simm v. Anglo-American Telegraph Company*; *Anglo-American Telegraph Company v. Spurling*, 5 Q. B. D. 188; 49 L. J., Q. B. 392; 42 L. T. 37; 28 W. R. 290; 44 J. P. 280—C. A.

—**Ratification.**—J. indorsed to the plaintiff a promissory note, bearing a signature which he stated to be the defendant's, but which was a forgery. Shortly before the note became due, the plaintiff, hearing from the defendant that the signature was a forgery, threatened to prosecute J.: whereupon the defendant, to prevent his doing so, said that he would pay the money, and signed a memorandum to the effect that he held himself responsible for the note, describing it as bearing his signature. The plaintiff having sued the defendant upon the note, the judge ruled that the defendant had ratified the forged signature, and directed a verdict for the plaintiff:—Held (per Kelly, C. B., Channell, B., and Pigott, B., dissentiente Martin, B.), that this ruling was wrong, because the defendant's arrangement was not a ratification of a signature, written by an agent claiming to have authority from the defendant in that behalf, but an agreement upon the defendant's part to become liable on the bill in consideration of the plaintiff's forbearing to prosecute J., which agreement was void as against public policy; and also because no act in its inception illegal and void, such as a forgery, can be ratified by matter subsequent; and that the defendant was not estopped from setting up the forgery as a defence to the action. *Brook v. Hook*, 6 L. R., Ex. 89; 40 L. J., Ex. 50; 24 L. T. 34; 19 W. R. 508.

XX. GOVERNMENT STORES.

Possession of, without Fraud.—One became possessed, on the death of her husband, of canvas stores, which had been purchased by him in his lifetime, at a public sale, and had been many years made up into household furniture, but no evidence was given of any certificate of such sale being lawful, as required by 9 & 10 Will. 3, c. 41, or of any excuse allowed by the act; yet the possession being, by act of law, without fraud:—Held, not within the penalty of the statute. *Anon.*, 2 East, P. C. 765.

Indictment.—An indictment under 39 & 40 Geo. 3, c. 89, alleged that A., on the 19th day of May, 1842, not being a contractor, had in his possession naval stores:—Held, that the date given applied to the allegation that A. was not a contractor, as well as to the allegation that he had possession of the stores, and therefore that it was sufficiently averred that he was not a contractor at the time of such possession. *Silver-*

sides v. Reg. (in error), 2 G. & D. 617; 3 Q. B. 406; 6 Jur. 805.

Evidence to Support Conviction.—Bags marked M. were forwarded from Portsmouth to London by railway, and were deposited in the goods department of the railway company in London. The prisoner, a marine store dealer at Portsmouth, wrote and telegraphed to G., an officer of the company, to deliver the bags to E. The bags, on being opened, were found to contain naval stores marked with the broad arrow. The bags had been delivered at the Portsmouth station by two women, but there was no evidence to connect them with the prisoner. Bags marked E. had previously been forwarded by the company to their goods department in London, and delivered to E., in accordance with directions received from the prisoner. He was indicted, under 9 & 10 Will. 3, c. 41, s. 2, for having naval stores in his custody, possession and keeping, and convicted:—Held, that the evidence was sufficient to support the conviction. *Reg. v. Suncley*, Bell, C. C. 145; 8 Cox, C. C. 179; 5 Jur., N. S. 551; 33 L. T., O. S. 154; 7 W. R. 418.

A. was indicted, under 9 & 10 Will. 3, c. 41, s. 2, for having been found in possession of naval stores marked with the broad arrow. It was proved that he delivered to the captain of a coasting vessel a cask containing copper bolts, a portion of which was marked with the broad arrow. The cask was seized by the police before the vessel sailed. In answer to questions put to the jury, they found that A. was in the possession of the copper bolts; that they had not sufficient evidence before them to shew that he knew that the copper, or any part of it, was marked with the broad arrow; and that he had reasonable means of knowing that it was so marked:—Held, that upon this finding of the jury he was entitled to an acquittal, as it must be taken that he did not know that the copper was marked. *Reg. v. Steep*, L. & C. 44; 8 Cox, C. C. 472; 30 L. J., M. C. 170; 7 Jur., N. S. 979; 4 L. T. 525; 9 W. R. 709.

Held, that the conviction was also wrong upon the ground that the copper was not found in his possession. *Id.*

— Knowledge that Mark on Stores.—An indictment framed under 9 & 10 Will. 3, c. 41, and 55 Geo. 3, c. 127, and charging that the prisoners received, and had in their possession, certain government stores, will not be supported by evidence which merely shews that they were dealing with the cases in which the stores were placed—in the absence of evidence to shew that they knew the government mark was on the stores. *Reg. v. O'Brien*, 15 L. T. 419.

On an indictment charging the defendant with being in possession of naval stores marked with the broad arrow, it is necessary to shew not only that he was possessed of the articles, but also that he knew they were marked with the broad arrow. *Reg. v. Cohen*, 8 Cox, C. C. 41.

The bare possession of marked naval stores does not render a person liable to be convicted under 9 & 10 Will. 3, c. 41, if he was ignorant that the stores are so marked. *Reg. v. Willmetts*, 3 Cox, C. C. 281.

A defendant charged with the possession of two lots of marked naval stores produced at his trial two certificates in respect of the different

lots, signed respectively by the commodore superintendent of the Woolwich Dockyard, and the secretary of the board of ordnance, the former having been granted to the person of whom the defendant purchased, the latter to the defendant himself:—Held, that these certificates, though not strictly in accordance with 9 & 10 Will. 3, c. 41, ss. 2, 4, were nevertheless an answer to the charge. *Id.*

False Entries in Books to conceal Fraudulent Charges.—The fraudulently charging, by a purser, of stores which were never issued, and the making of false entries in the ship's books to cover such charges, is an offence punishable "according to the laws and customs in such cases used at sea," as amounting under 22 Geo. 2, c. 33, s. 36, to "a crime not capital, committed by a person in the fleet not before mentioned in this act, and for which no punishment is thereby directed to be inflicted." *Mann v. Owen*, 4 M. & R. 449; 9 B. & C. 595.

Summary Conviction.—On a summary conviction under 39 & 40 Geo. 3, c. 89, s. 18, for unlawful possession of naval stores, the commissioner (or superintendent since 2 & 3 Will. 4, c. 40, ss. 10, 11), or a justice of the peace, has power, in the alternative, either to inflict a fine, or to imprison with hard labour without imposing a fine. *Reg. v. Willmott*, 1 B. & S. 27; 30 L. J., M. C. 161; 7 Jur., N. S. 1053; 4 L. T. 208; 9 W. R. 633.

The pendency of an appeal under s. 21 has not the effect of suspending the operation of the sentence. *Id.*

Summary convictions under that act are not affected by 11 & 12 Vict. c. 43. *Id.*

XXI. GUNPOWDER.

Illegal Making, Use and Employment.—By 24 & 25 Vict. c. 97, s. 54, *whosoever shall make or manufacture, or knowingly have in his possession, any gunpowder, or other explosive substance, or any dangerous or noxious thing, or any machine, engine, instrument or thing, with intent thereby or by means thereof to commit, or for the purpose of enabling any other person to commit, any of the felonies in this act mentioned, shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.* (Former provision, 9 & 10 Vict. c. 25, s. 8.)

By s. 55, *any justice of the peace of any county or place in which any machine, engine, implement or thing, or any gunpowder or other explosive, dangerous, or noxious substance, is suspected to be made, kept or carried for the purpose of being used in committing any of the felonies in this act mentioned, upon reasonable cause assigned upon oath by any person, may issue a warrant under his hand and seal for searching in the daytime any house, mill, magazine, storehouse, warehouse, shop, cellar, yard, wharf or other place, or any carriage, waggon, cart, ship, boat or vessel, in which the same is suspected to be made, kept or carried for such purpose as hereinbefore mentioned; and every person acting*

in the execution of any such warrant shall have, for seizing, removing to proper places, and detaining every such machine, engine, implement and thing, and all such gunpowder, explosive, dangerous or noxious substances found upon such search, which he shall have good cause to suspect to be intended to be used in committing any such offence, and the barrels, packages, cases and other receptacles in which the same shall be, the same powers and protections which are given to persons searching for unlawful quantities of gunpowder under the warrant of a justice by 23 & 24 Vict. c. 139.

Delivery of, for Carriage on Ship.—It would seem that if persons put on board a ship an unknown article of a combustible and a dangerous nature, without giving due notice of its contents, so as to enable the master to use proper precautions in the stowing of it, they are guilty of a misdemeanor. *Williams v. East India Company*, 3 East, 192, 201.

Intent to Murder by.—See MURDER, and OFFENCES AGAINST THE PERSON, *infra*.

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XXII. LARCENY AND RECEIVERS.

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1. THE OFFENCE.

(24 & 25 Vict. c. 96.)

a. Felonious Intent.

Intention to deprive Owner of Goods permanently.—To constitute larceny it is necessary that the party should have had an intention to deprive the owner of his property permanently. *Reg. v. Holloway*, 2 C. & K. 942; 1 Den. C. C. 370; T. & M. 48; 3 New Sess. Cas. 410; 3 Cox, C. C. 241; 18 L. J., M. C. 60; 13 Jur. 86.

The correct definition of larceny is the wrongful or fraudulent taking and carrying away by any person of the mere personal goods of another, with a felonious intent to convert them to his (the taker's) own use, and make them his own property. The fraudulent taking being explained to be a taking without any colour of right, and the felonious intent, an intent to deprive the owner permanently of his property. *Id.*

A person who had surreptitiously taken a printed document from a government office, and sent it to a newspaper office to be published, being indicted for larceny.—Held, that the question for the jury was whether he had the object and intention of depriving the government permanently of the property in the paper. *Reg. v. Guernsey*, 1 F. & F. 394.

A banker's clerk enters a fictitious sum in the ledger to the credit of a customer, and tells him he has paid that sum to his account; and on the faith of it obtains from the customer his cheque on the bankers, which the clerk pays to himself by bank notes from the till, and enters in the waste book a true account of the cheque, drawer and notes, as paid to "a man :"—Held, a felonious taking of the notes from the till. *Rea v. Hammen*, 4

Taunt. 304; 2 Leach, C. C. 1083; R. & R. C. C. 221.

Where the prisoners having entered a stable at night, and taking out horses, rode them thirty-two miles, and then left them at an inn, and were afterwards found pursuing their journey on foot; and the jury found that they took the horses merely with intent to ride and afterwards to leave them, and not to return or make any further use of them:—Held, that this was a trespass and not a larceny. *Reg. v. Phillips*, 2 East, P. C. 662.

The defence to a charge of stealing, that the prisoner pledged the property, intending to redeem and then restore it, is a defence not to be generally encouraged, though, if clearly made out in proof, it may be allowed to prevail. The rule for the jury's guidance in such a case seems to be, that, if it clearly appears that the prisoner only intended to raise money upon the property for a temporary purpose, and at the time of pledging the article had a reasonable and a fair expectation of being enabled shortly, by the receipt of money, to take it out and restore it, he might be acquitted; but, otherwise, not. *Reg. v. Phetheon*, 9 C. & P. 533.

On a charge of larceny it was proved that the prisoner had taken property from ready-furnished lodgings that were let to her, and had pawned it:—Held, that the fact that she had frequently pawned and afterwards redeemed portions of the same property, was no answer to the charge. There must not only be the intent, but also the ability to redeem, to render such defence available. *Reg. v. Medland*, 5 Cox, C. C. 292.

Upon an indictment for larceny, it was proved that a box of plate having been deposited with the prisoner for safe custody, he broke it open, and took out a part of the plate, which he offered to a pawnbroker as a security for 50*l*. His offer was declined, but he afterwards pledged the whole box of plate with another person as security for 200*l*. When he was called upon to restore the plate to the owner, he had not the means of redeeming it, and was taken into custody. The jury found him guilty, but recommended him to mercy, believing that he intended ultimately to return the property:—Held, that he was rightly convicted of larceny at common law, because the jury had found a verdict of guilty which was well warranted by the evidence; and though they had recommended him to mercy on the ground that he intended ultimately to restore the property, that expression was not necessarily inconsistent with the verdict, and ought not to be considered equivalent to a finding, that at the time when he took the plate wrongfully he took it for the purpose of merely making a temporary use of it. *Reg. v. Trebilcock*, 7 Cox, C. C. 408; Dears. & B. C. C. 453; 27 L. J., M. C. 103; 4 Jur., N. S. 123.

Lucri Causâ—Private Advantage.—A servant of B. applied for at the post-office and received all the letters addressed to B. She delivered them all to B., except one, which she burned. Her motive for destroying it was the hope of suppressing inquiries respecting her character:—Held, a larceny, and that, supposing *lucri causâ* to be a necessary ingredient therein (which the court did not admit), there was a sufficient *lucrum* proved. *Reg. v. Jones*, 1 Den. C. C. 188; 2 C. & K. 236.

To make a taking felonious it is not necessary

that it should be done *lucri causâ*; taking with an intent to destroy will be sufficient to constitute the offence of larceny, if done to serve the prisoner, or another person, though not in a pecuniary way. *Reg. v. Cabbage*, R. & R. C. C. 292.

But if a person, from idle curiosity, either personal or political, opens a letter addressed to another person, and keeps the letter, this is no larceny, even though a part of his object may be to prevent the letter from reaching its destination. *Reg. v. Godfrey*, 8 C. & P. 563.

A person employed in the post-office committed a mistake in the sorting of two letters containing money, and he threw the letters, unopened, and the money, down a water-closet, in order to avoid a penalty attached to such mistakes:—Held, that this was a larceny of the letters and money. *Reg. v. Wynn*, 2 C. & K. 859; 1 Den. C. C. 365; T. & M. 32; 3 Cox, C. C. 269; 2 New Sess. Cas. 414; 18 L. J., M. C. 51; 13 Jur. 107.

Servants who clandestinely took their masters' oats, with intent to give them to their masters' horses, and without any intent to apply them to their own private benefit, were guilty of larceny, even though they were not answerable at all for the condition of the horses. *Reg. v. Privett*, 2 C. & K. 114; 1 Den. C. C. 193; *S. P.*, *Reg. v. Handley*, Car. & M. 547; *Reg. v. Morfit*, R. & R. C. C. 307.

But now, by 26 & 27 Vict. c. 103, s. 1, servants taking their masters' corn, pulse, roots, or other food contrary to their orders, for the purpose of giving the same to their masters' horses or other animals, shall not by reason thereof be deemed guilty of felony, but shall be liable to imprisonment, or to pay a pecuniary penalty.

Offering Goods to Owner for Sale.—A., the servant of B., a tallow-chandler, clandestinely removed a quantity of fat, the property of B., from an upper room in B.'s warehouse, to a lower room in the same place, and placed it in a pair of scales, and afterwards represented to B. that a butcher named D. had sent the fat to be purchased and paid for by B.:—Held, that A. was rightly convicted of larceny. *Reg. v. Hall*, 2 C. & K. 947; T. & M. 47; 1 Den. C. C. 381; 3 New Sess. Cas. 407; 3 Cox, C. C. 245; 18 L. J., M. C. 62; 13 Jur. 87.

Removal of Goods to obtain Money from Master.—In order to constitute larceny, the taking must be with intention to vest the property in the thief; and therefore, where servants employed by a glove-maker in finishing gloves, removed a quantity of finished gloves from one part of the master's premises to another, with intent fraudulently to obtain payment for them as for so many gloves finished by them:—Held, that they were not guilty of larceny. *Reg. v. Poole*, 7 Cox, C. C. 373; Dears. & B. C. C. 345; 27 L. J., M. C. 53; 3 Jur., N. S. 1268.

M. had the charge of the prosecutor's warehouse, in which bags were kept; S. for some years had been in the habit of supplying the prosecutor with bags, which were usually placed outside the warehouse, and shortly after so leaving them either S. or his wife called and received payment for them. M. went into his master's warehouse and clandestinely removed twenty-four bags which had been marked by his master, and placed them outside the warehouse, in the place where S. used to deposit the bags before payment for them. Soon afterwards the wife of

S. came and claimed payment for these bags, and S. stated that he had placed the bags there. The jury found that the bags had been so removed in pursuance of a previous arrangement between the prisoners:—Held, that he was rightly convicted of larceny. *Reg. v. Manning, Dears, C. C. 21; 5 Cox, C. C. 86; 22 L. J., M. C. 21; 17 Jur. 28.*

It is not larceny for miners employed to bring ore to the surface, and paid by the owners according to the quantity produced, to remove from the heaps of other miners ore produced by them and add it to their own, in order to increase their wages, the ore still remaining in the possession of the owners. *Reg. v. Webb, 1 M. C. C. 431. See now 24 & 25 Vict. c. 96, s. 39.*

A. was supplied with a quantity of pig-iron by B. & Co., his employers, which he was to put into a furnace to be melted, and he was paid according to the weight of the metal which ran out of the furnace and became puddle-bars. A. put the pig-iron into the furnace, and also put in with it an iron axle of B. & Co., which was not pig-iron. The value of the axle to B. & Co. was 7s., but the gain to the prisoner by melting it, and thus increasing the quantity of metal which ran from the furnace, was 1d.:—Held, that, if the prisoner put the axle into the furnace with a felonious intent to convert it to a purpose for his own profit, it was larceny. *Reg. v. Richards, 1 C. & K. 532.*

Taking Articles to induce Girl to fetch them.]

—Clandestinely taking away articles to induce the owner (a girl) to fetch them, and thereby to give the prisoner an opportunity to solicit her to commit fornication with him, is not felonious. *Reg. v. Dickenson, R. & R. C. C. 420.*

Assertion of Right.]—Upon an indictment for larceny, it appeared that the prisoner had been intrusted by the wife of the prosecutor to repair an umbrella. After the repairs were finished and it had been returned to the wife, a dispute arose as to the bargain made. The prisoner thereupon carried away the umbrella as a security for the amount alleged by him to be due for repairing it:—Held, that if the jury was of opinion that the taking by the prisoner was an honest assertion of his right, they were to find him not guilty, but if it was only a colourable pretence to obtain possession, then to convict him. *Reg. v. Wade, 11 Cox, C. C. 549.*

No Knowledge that Goods hired.]—The prisoner's wife hired a bedstead at 1s. per week, and within a fortnight afterwards the prisoner sold it to a broker, his wife being present at the sale. Two days after the sale the wife paid 1s. for a week's hire, being all that was paid. There was no evidence that the prisoner knew that the bedstead had only been hired:—Held, that a conviction for larceny could not be sustained. *Reg. v. Halford, 11 Cox, C. C. 88; 18 L. T. 334; 16 W. R. 731.*

To defeat Execution.]—A judgment debtor's goods having been seized under warrants of execution of a county court, and being in the possession of the bailiff, the debtor, with intent to deprive the bailiff, as he supposed, of his authority, and so defeat the execution, forcibly took the warrants from him:—Held, that he

was not guilty of larceny. *Reg. v. Bailey, 1 L. R., C. C. 347; 41 L. J., M. C. 61; 25 L. T. 882; 20 W. R. 301; 12 Cox, C. C. 129.*

Taking Horse in order to convey stolen Property.]—If a person stealing other property takes a horse, not with the intent to steal it, but only to get off more conveniently with the other property which he has stolen, such taking of the horse is not a felony. *Reg. v. Crump, 1 C. & P. 658.*

Question must be left to Jury.]—Money was given to the prisoner for the purpose of paying turnpike tolls at two gates on his journey. Twelve days afterwards, on being asked if he had paid the toll at one of the gates, the prisoner said he had not—that he had gone by the parish road which only crossed the road at the gate, and so no toll was payable there, and that he had spent the money on beer for himself and his mates. The prisoner having been convicted of larceny of the money, but on a case reserved as to whether the facts proved a larceny:—Held, without deciding whether upon such facts a conviction for larceny could be sustained, that as it did not appear that the proper question had been left to the jury the conviction must be quashed. *Reg. v. Deering, 11 Cox, C. C. 298; 20 L. T. 680; 17 W. R. 807.*

b. The Taking.

What Sufficient.]—If a thief goes to an inn, and, intending to steal a horse, directs the ostler to bring out his horse, pointing to that of the prosecutor, and the ostler, at his desire, leads out the horse for the prisoner to mount: this is a sufficient taking by the prisoner to support an indictment for horse-stealing. *Reg. v. Pitman, 2 C. & P. 423.*

A Man cannot take his own Goods.]—The prisoner assigned his goods to trustees for the benefit of his creditors; but before the trustees had taken possession, and while the prisoner remained in possession of them, he removed the goods, intending to deprive his creditors of them. The jury found that the goods were not in his custody as agent of the trustees:—Held, that he was not guilty of larceny. *Reg. v. Pratt, Dears, C. C. 360; 2 C. L. R. 774; 6 Cox, C. C. 373; 18 Jur. 539.*

— Except from Bailee.]—If a man steals his own goods from his own bailee, though he has no intent to charge the bailee, but his intent is to defraud the king, yet if the bailee had an interest in the possession, and could have withheld it from the owner, the taking is a larceny. *Reg. v. Wilkinson, R. & R. C. C. 470.*

Wife cannot Steal Husband's Goods.]—Stealing, by the wife of a member of a friendly society, money of the society, deposited in a box in the husband's custody, kept locked by the stewards, is not larceny. *Reg. v. Willis, 1 M. C. C. 375.*

A wife, though she may have committed adultery, cannot steal her husband's goods. *Reg. v. Kenny, 2 Q. B. D. 307; 46 L. J., M. C. 156; 36 L. T. 36; 25 W. R. 679; 13 Cox, C. C. 397.*

But where a married woman, at the request of A., took charge of his box containing money, and

afterwards fraudulently stole the money, the husband having nothing to do with any part of the matter:—Held, that she was guilty of larceny. *Reg. v. Robson*, L. & C. 93; 9 Cox, C. C. 29; 31 L. J., M. C. 22; 8 Jur., N. S. 64; 5 L. T. 402; 10 W. R. 61.

See also cases, *post*, col. 321.

Part-owner of Property.—If a part-owner of property steals it from A., in whose sole custody it is, and who is solely responsible for its safety, he is guilty of larceny, and the property is well laid in A. alone, although he is also a part-owner of the property stolen. *Reg. v. Webster*, L. & C. 77; 9 Cox, C. C. 13; 31 L. J., M. C. 17; 7 Jur., N. S. 1208; 5 L. T. 327; 10 W. R. 20; *S. P.*, *Rea v. Bramley*, R. & R. C. C. 478.

Where a friendly society had appointed a treasurer and two trustees, one of the trustees was held guilty of larceny in stealing the money of the society. *Reg. v. Cwin*, 2 M. C. C. 204; Car. & M. 309.

—**Shareholder but not Part-owner.**—A. was convicted on a count which charged him with stealing a piece of paper, the property of G. and others, his masters. G. and others were directors of an unincorporated insurance company, managed its affairs, appointed, paid, controlled and dismissed the clerks and other servants, and had the charge and custody of all the books and papers of the company. The company had a drawing account with G. & Co., and used to send their pass books in every week to be written up, and their messenger went on the following morning to bring it back, when it was returned, together with the cheques, &c. of the preceding week. A. was a salaried clerk in the office of the company, and also a shareholder; it was his duty to receive the pass book and vouchers from the messenger, and to preserve the vouchers for the use of the company. G. & Co. delivered the pass book, containing among other things a cashed cheque for £1,400., to the messenger of the company, who delivered the book and cheque to A. in the usual way, and he thereupon fraudulently destroyed it:—Held, that the cheque was the property of the directors, and that A., though a shareholder in the company, had not a joint property in it, and was properly convicted of larceny. *Reg. v. Watts*, 2 Den. C. C. 14; T. & M. 342; 4 Cox, C. C. 336; 19 L. J., M. C. 193; 14 Jur. 870.

Thief let into House by Servant.—A servant let a person into his master's house on a Saturday afternoon, and concealed him there all night, in order that he might rob the house, and on Sunday morning left the premises. In pursuance of the previous arrangement, the man, in the servant's absence, broke into the bedroom of the master, and stole the contents of his cash-box:—Held, that the man who took the property from the cash-box was rightly charged as a thief. *Reg. v. Tuekwell*, Car. & M. 215.

Lost Property—Whether Owner known.—A servant indicted for stealing bank notes, the property of her master, in his dwelling-house, set up, as her defence, that she found them in the passage, and not knowing to whom they belonged, kept them to see if they were advertized:—Held, she ought to have inquired of her master whether they were his or not; and that not having done

so, but having taken them away from the house, she was guilty of stealing them. *Reg. v. Kerr*, 8 C. & P. 176.

If a bureau is delivered to a carpenter to repair, and he discovers money in a secret drawer of it, which he unnecessarily as to its repairs breaks open, and converts the money to his own use, it is a felonious taking of the property, unless it appears that he did it with intention to restore it to its right owner. *Cartwright v. Green*, 2 Leach, C. C. 952; 8 Ves. 405.

If a parcel is accidentally left in a hackney-coach, and the coachman, instead of restoring it to the owner, detains it, opens it, destroys part of its contents, and borrows money on the rest, he is guilty of felony. *Rea v. Wynne*, 1 Leach, C. C. 413; 2 East, P. C. 664, 697; *S. P.*, *Rea v. Sears*, 1 Leach, C. C. 415, n.

A person purchased, at a public auction, a bureau in which he afterwards discovered, in a secret drawer, a purse containing money, which he appropriated to his own use. At the time of the sale no person knew that the bureau contained anything whatever:—Held, that if the buyer had express notice that the bureau alone, and not its contents, if any, was sold to him; or if he had no reason to believe that anything more than the bureau itself was sold, the abstraction of the money was a felonious taking, and he was guilty of larceny in appropriating it to his own use. But that if he had reasonable ground for believing that he bought the bureau with its contents, if any, he had a colourable property, and it was no larceny. *Merry v. Green*, 7 M. & W. 623; 10 L. J., M. C. 154.

—**Question is whether at time of taking, Prisoner knew Owner could be Found.**—Where a bank note was lost, and was found by a person who appropriated it to his own use:—Held, that the jury is not to be directed to consider at what time the prisoner, after taking it into his possession, resolved to appropriate it to his own use, but whether at the time he took possession of it he knew, or had the means of knowing, who the owner was, and took possession of it with intent to steal it; for if his original possession of it was an innocent one, no subsequent change of his mind, or resolution to appropriate it to his own use, would amount to larceny. *Reg. v. Preston*, 2 Den. C. C. 353; T. & M. 641; 5 Cox, C. C. 390; 21 L. J., M. C. 41; 16 Jur. 109.

A. found a watch, and subsequently converted it to his own use; the jury found him "not guilty of stealing the watch, but guilty of keeping possession of it, in the hope of reward, from the time he first had the watch." A verdict of guilty was entered at the trial:—Held, wrong, and that on these facts and this finding it was no larceny. *Reg. v. Yorke*, 2 C. & K. 841; 1 Den. C. C. 335; T. & M. 20; 3 Cox, C. C. 181; 18 L. J., M. C. 38; 12 Jur. 1078.

The finder of a lost sovereign in the high road who, at the time of the finding, had no reasonable means of knowing who the owner was, but who at that time intended to appropriate it even if the owner should afterwards become known, and to whom the next day the owner was made known, when he refused to give it up, is not guilty of larceny. *Reg. v. Glyde*, 1 L. R., C. C. 139; 37 L. J., M. C. 107; 18 L. T. 613; 16 W. R. 1174; 11 Cox, C. C. 103.

The prisoner's child found six sovereigns in the street, which she brought to the prisoner.

The latter counted it, and told some bystanders that the child had found a sovereign, and offered to treat them. The prisoner and the child then went down the street to the place where the child had found the money, and found a half-sovereign and a bag. Two hours afterwards the owner made hue-and-cry in the vicinity. On the same evening the prisoner was told that a woman had lost money; the prisoner told her informant to mind her own business, and gave her half-a-sovereign for herself. The prisoner admitted, on arrest, that she had got the money from the child:—Held, that these facts did not warrant a conviction for larceny, as there was nothing to shew that at the time of the finding the prisoner had reason to think that the owner could be found. *Reg. v. Deares*, 11 Cox, C. C. 227; 3 Ir. R., C. L. 306.

If a man finds goods that have been actually lost, or are reasonably supposed by him to have been lost, and appropriates them with intent to take the entire dominion over them, really believing, when he takes them, that the owner cannot be found, it is not larceny. *Reg. v. Thurborn*, 1 Den. C. C. 387; T. & M. 67; 2 C. & K. 831; 18 L. J., M. C. 140; 13 Jur. 499; *S. C.*, *Reg. v. Wood*, 3 New Sess. Cas. 581; 3 Cox, C. C. 453.

But if he takes them with the like intent, though lost, or reasonably supposed to be lost, but reasonably believing that the owner can be found, it is larceny. *Id.*

A. picked up the purse of B., which contained money, on a turnpike road, along which B. had previously travelled by coach. A. converted the purse and its contents to his own use:—Held, no larceny; and that A. was liable civilly, but not criminally. *Reg. v. Mole*, 1 C. & K. 417.

If there had been any mark on the purse by which the owner could have been known it would have been otherwise. *Id.*

A purse containing money was left by a purchaser on the prisoner's stall. A third person afterwards pointed out the purse to the prisoner, supposing it to be hers. She put it in her pocket and afterwards concealed it, and on the return of the owner denied all knowledge of it. The jury found that the prisoner took up the purse knowing it was not her own, and intending at the time to appropriate it to her own use, but that she did not know who was the owner at the time she took it:—Held, that as the purse was not lost property, the prisoner was properly convicted of larceny. *Reg. v. West*, Dears. C. C. 402; 6 Cox, C. C. 415; 3 C. L. R. 86; 24 L. J., M. C. 4; 18 Jur. 1030.

A finder of lost property is not guilty of larceny in appropriating it to his own use, unless he has a felonious intent at the time of the finding. *Reg. v. Christopher*, Bell, C. C. 27; 8 Cox, C. C. 91; 28 L. J., M. C. 35; 5 Jur., N. S. 24; 32 L. T., O. S. 150; 7 W. R. 60.

A. was indicted for stealing a bank note. The prosecutor had paid for an article purchased at A.'s shop, out of a purse in which were two bank notes. Next morning he discovered the loss of one of the notes, and applied to A., who told him he knew nothing of the note. He, however, afterwards stated he had given gold for it on the day of the loss. The jury, in answer to questions put to them, found—first, that the note was dropped by the prosecutor in the shop, and that A. found it there; secondly, that he at the time he picked up the note did not know, nor had he reasonable

means of knowing, who the owner was; thirdly, that he afterwards acquired knowledge of who the owner was, and after that he converted the note to his own use; fourthly, that he intended, when he picked up the note in the shop, to take it to his own use, and deprive the owner of it, whoever that owner might be; and, fifthly, that he believed, at the time he picked up the note, that the owner could be found. A verdict of guilty was thereupon entered:—Held, that he was properly convicted. *Reg. v. Moore*, L. & C. 1; 8 Cox, C. C. 416; 30 L. J., M. C. 77; 7 Jur., N. S. 172; 9 W. R. 276.

If a person drops any chattel, and another finds it, and takes it away with the intention of appropriating it to his own use, and only restores it because a reward is offered, he is guilty of larceny. *Reg. v. Peters*, 1 C. & K. 245. *S. P.*, *Reg. v. Reed*, Car. & M. 306.

— **Abandonment by Owner.**—The only cases in which a party finding a chattel of another can be justified in appropriating it to his own use, is where the owner cannot be found, or where it may be fairly said that the owner has abandoned it. *Id.*

— **The Fact that Prisoner might have discovered Owner makes no difference.**—When it appears that the goods alleged to have been stolen were found by the prisoner, he cannot be convicted of larceny unless there is some evidence that at the time of the finding he believed that the true owner could be ascertained, and it is not enough that the jury is satisfied that he could within a reasonable time have discovered the owner. *Reg. v. Knight*, 12 Cox, C. C. 102; 25 L. T. 508; 20 W. R. 122.

If a man finds lost property and keeps it, and at the time of finding it has no means of discovering the owner, he is not guilty of larceny, because he afterwards has means of finding him, and nevertheless retains the property to his own use. *Reg. v. Dixon*, Dears. C. C. 580; 7 Cox, C. C. 35; 25 L. J., M. C. 39.

Seemingly, if a man finds property which has been lost, and appropriates it to himself, he is not guilty of larceny for failing to take steps to discover the owner, unless he saw the article drop from the owner, or unless it has the owner's name upon it, or some circumstances of the sort occurred which afforded the finder an immediate means of knowing who the owner was at the moment when he picked it up and examined it. *Id.*

— **Cheque Found—Possession by Another.**—A prosecutor found a cheque, and, being unable to read, shewed it to the prisoner. The prisoner told him that it was only an old cheque of the Royal British Bank, and kept it. He afterwards made excuses for not giving it up to the prosecutor, withholding it from him in the hopes of getting the reward that might be offered for it:—Held, that these facts did not shew such a taking as was necessary to constitute larceny. *Reg. v. Gardner*, L. & C. 243; 9 Cox, C. C. 253; 32 L. J., M. C. 35; 8 Jur., N. S. 1217; 7 L. T. 471; 11 W. R. 96.

— **Property Found in Railway Carriage.**—The law with regard to the finder of lost property does not apply to the case of property of a passenger accidentally left in a railway carriage,

and found there by a servant of the company ; and such servant is guilty of larceny, if, instead of taking it to the station or superior officer, he appropriates it to his own use. *Reg. v. Pierce*, 6 Cox, C. C. 117.

c. Where Delivery by Owner passes Possession and Right of Property.

Taking away Goods without Paying for them.]

—If a horse is purchased by and delivered to the buyer, it is not felony though he immediately rides away with it without paying the purchase-money. *Reg. v. Harvey*, 1 Leach, C. C. 467 ; 2 East, P. C. 669.

Where the prisoner obtained possession of a hat from the maker, which had been ordered by a third person, by sending a boy for it in the name of such third person :—Held, it did not amount to larceny. *Reg. v. Adams*, R. & R. C. C. 225.

Taking Goods by means of Forgery.]—A. went to B.'s shop, and said that he had come from C. for some hams, and at the same time produced a note in the following terms :—"Have the goodness to give the bearer ten good thick sides of bacon, and four good showy hams, at the lowest price. I shall be in town on Thursday next, and will call and pay you. Yours, &c., C." B. thereupon delivered the hams to A. The note was forged, and A. had no such authority from C. :—Held, that A. was not guilty of larceny. *Reg. v. Adams*, 1 Den. C. C. 38.

Possession obtained by a Trick.]—Where, in a case of ring-dropping, the prisoners prevailed on the prosecutor to buy the share of the other party, and the prosecutor was prevailed on to part with his money, intending to part with it for ever, and not with the possession of it only :—Held, that this was not a larceny. *Reg. v. Willson*, 8 C. & P. 111.

A. was treating B. at a beer-house, and A. wishing to pay, put down a sovereign, desiring the landlady to give him change ; she could not do so ; and B. said that he would go out and get change. A. said, "You won't come back with the change." B. replied, "Never fear." A. allowed B. to take up the sovereign, and B. never returned either with it or the change :—Held, no larceny, as A. having permitted the sovereign to be taken away for the purpose of being changed, he could never have expected to receive back the specific coin, and had therefore divested himself of the entire possession of it. *Reg. v. Thomas*, 9 C. & P. 741.

W. sold and delivered a horse to G., and by way of payment took two pigs of G. of about the same value, no money passing. W. then borrowed the horse from G. to run against C., who won the race, and claimed and took away the horse that W. rode :—Held, no evidence of any larceny of the horse by C. or W. *Reg. v. Carter*, 47 J. P. 759.

If a person is induced to play at hiding under the hat, and stakes down his money voluntarily on the event, meaning to receive the stake if he wins, and to pay it if he loses, the taking up the stake so deposited by him on the table is not a felonious taking, although the taker was made to appear to win the money by fraudulent conspiracy and collusion. *Reg. v. Nicholson*, 2 Leach, C. C. 610 ; 2 East, P. C. 669.

Where a servant by a false pretence induces his master to give him a cheque as agent of a creditor of his master with the view of its being handed over to that creditor, and the servant appropriates the cheque to his own use, he cannot be indicted for stealing it. *Reg. v. Essex*, Dears. & B. C. C. 371 ; 7 Cox, C. C. 384 ; 27 L. J., M. C. 20 ; 4 Jur., N. S. 16.

The prisoner was a servant in the employment of grocers who were in the habit of purchasing kitchen-stuff. It was his duty to receive and weigh it, and, if the chief clerk was in the counting-house, to give the seller a ticket specifying the weight and price of the article, and the name of the seller, which ticket was signed with the initials of the prisoner. The seller, on taking this ticket to the chief clerk, received the price of the kitchen-stuff. In the absence of the chief clerk the prisoner had himself authority to pay the seller, and afterwards, on producing the ticket to the chief clerk, was repaid. The prisoner had, on the day mentioned in the indictment, presented a ticket to the chief clerk, purporting to contain all the usual specifications, and marked with the prisoner's initials, and demanded the sum of 2s. 3d., which he alleged that he had paid for kitchen-stuff. He received the money and appropriated it to his own use, and it was afterwards discovered that no such person as was described in the ticket had ever sold any such article to the prosecutors, but that the ticket was fraudulently made out and presented by the prisoner :—Held, a case of false pretences, and that an indictment for larceny could not be sustained. *Reg. v. Barnes*, 2 Den. C. C. 59 ; T. & M. 387 ; 20 L. J., M. C. 34 ; 14 Jur. 1123.

G. was indicted for larceny. The evidence shewed that he was the prosecutor's servant ; that it was his duty to receive and pay moneys for the prosecutor, and make entries of such receipts and payments in a book which was examined by the prosecutor from time to time ; that the prisoner on one occasion shewed a balance in his favour of 2l., by taking credit for payments falsely entered in the book as having been made by him, when in fact they had not been made by him, and that the prisoner received from his master the sum of 2l. as a balance due to him. He was convicted :—Held, that the conviction was wrong. *Reg. v. Green*, Dears. C. C. 323 ; 2 C. L. R. 603 ; 6 Cox, C. C. 296 ; 18 Jur. 158.

It was the duty of a clerk to the prosecutors to ascertain daily the amount of doek and town dues payable by the prosecutors on the exportation of their goods, and, having received the money from the prosecutors' cash-keeper, to pay it over to those who were entitled to it ; the clerk falsely represented that a sum of 3l. 10s. 4d. was due on a certain day, whereas, in truth, a sum of 1l. 3s. only was due, and, having obtained the larger sum from the cash-keeper, converted the difference to his own use :—Held, that he was not guilty of larceny, but might have been convicted of obtaining money by false pretences. *Reg. v. Thompson*, L. & C. 233 ; 9 Cox, C. C. 222 ; 32 L. J., M. C. 57 ; 8 Jur., N. S. 1162 ; 7 L. T. 393 ; 11 W. R. 41.

The prisoner was employed by the prosecutor to make up canvas bags at his (the prisoner's) own house. The canvas was cut out at the shop of the prosecutor and taken away by the prisoner. A portion of it was duly worked up

and returned, the remainder was converted by him to his own use :—Held, that he could not be convicted of larceny. *Reg. v. Saward*, 5 Cox, C. C. 295.

B., a broker, having large dealings with the prosecutors, Russian merchants, in October entered into a contract for the purchase of 343 casks of tallow which were expected to arrive by the Hesper, in the ordinary course of trade. The tallow arrived accordingly on the 5th of December, and in due course the transaction should have been completed within fourteen days, and notice was given to B. of the arrival of the tallow, and he was called upon to complete the bargain. He requested that the tallow might be allowed to remain in the docks for a short time. This was granted. On January 28th the manager for the prosecutors called on him, and insisted on the completion of the contract, and B. said he would pay for the tallow on the following day. On the next day B. sent his clerk to the prosecutors' counting-house, and obtained delivery orders for the tallow, and tendered to the prosecutors a crossed cheque on a bank of London for the price of the tallow. Immediately on obtaining possession of the delivery orders, he sent them to the docks, and transferred the property into fresh warrants, and when the cheque was presented there were no assets :—Held, not to be a larceny of the delivery orders by a trick, but a lawful possession of them obtained by reason of the prosecutors giving to B. credit in respect of the crossed cheque. *Reg. v. North*, 8 Cox, C. C. 43.

Possession obtained by Delivery of Bills.]—If a tradesman sells a stranger goods, enters them to his debit, and makes out a bill of parcels for them as goods sold, and the goods are delivered to the purchaser by the servant of the seller, who receives bills for them, it is not felony, although the tradesman sold them for ready money, never intending to give the stranger credit, and it appears that he had taken the apartments to which he ordered them to be sent for the purpose of obtaining them fraudulently. *Reg. v. Parkes*, 2 Leach, C. C. 614; 2 East, P. C. 671.

Authority of Servant to act in course of Business.]—Where a prisoner took a packet of diamonds to a pawnbroker, with whom he had previously pledged a brooch; and having agreed with the shopman for the amount of the loan on the diamonds, sealed them up and received the amount, deducting the amount for which the brooch was pledged; but, instead of giving the packet of diamonds to the shopman, gave him a packet of similar appearance, containing only glass :—Held, that it was not larceny, but only a fraud. *Reg. v. Meilheim*, Car. C. L. 281.

If a pawnbroker's servant, who has a general authority from his master to act in his business, delivers up a pledge to the pawner, on receiving a parcel from the pawner, which he supposes contains valuables he has just seen in the pawner's possession in a similar parcel, the receipt of the pledges by the pawner is not a larceny. *Reg. v. Jackson*, 1 M. C. C. 119.

To constitute larceny, there must be a taking of the property against the will of the owner. But the cashier of a bank has authority, arising from the nature of his employment, to pay the money of the bank to persons presenting genuine

orders, and to judge of their genuineness. *Reg. v. Prince*, 4 L. R., C. C. 150; 38 L. J., M. C. 8; 19 L. T. 364; 17 W. R. 179; 11 Cox, C. C. 193.

Therefore, a cashier, who, deceived by a forged order, purporting to be drawn by a customer, pays money to the payee, who presents it knowing it to be forged, thereby parts with the property in the money of the bank to the payee so as to bind his employer, and the payee is therefore not guilty of larceny, but of obtaining money by false pretences. *Ib.*

A depositor in a post office savings bank obtained a warrant for the withdrawal of 10s., and presented it with his depositor's book to a clerk at the post office, who instead of referring to the proper letter of advice for 10s., referred by mistake to another letter of advice for 8l. 16s. 10d., and placed that sum upon the counter. The clerk entered 8l. 16s. 10d. in the depositor's book as paid, and stamped it. The depositor took that sum and went away. The jury found that he had the animus furandi at the moment of taking the money from the counter, and that he knew the money to be the money of the Postmaster-General when he took it up, and found him guilty of larceny :—Held, by a majority of judges, that he was properly convicted of larceny. *Reg. v. Middleton*, 2 L. R., C. C. 38; 42 L. J., M. C. 73; 28 L. T. 777; 12 Cox, C. C. 260, 417.

By Cockburn, C. J., Blackburn, J., Mellor, J., Lush, J., Grove, J., Denman, J., and Archibald, J., on the ground that, even assuming the clerk to have the same authority to part with the possession of and property in the money which the Postmaster-General would have had, the mere delivery under a mistake, though with the intention of passing the property, did not pass the property; and the possession being obtained animus furandi, there was both a taking and a stealing within the definition of larceny. *Ib.*

By Bovill, C. J., Kelly, C. B., and Keating, J., that the clerk, having only a limited authority under the letter of advice, had no power to part with the property in the money to the prisoner, and that therefore the conviction was right. *Ib.*

By Pigott, B., that, before possession of the money was parted with, and whilst it was on the counter, the prisoner had the animus furandi, and took it up, and was therefore guilty of larceny. *Ib.*

But by Martin, B., Bramwell, B., Brett, J., and Cleasby, B., that the money was not taken invito domino, and, therefore, that there was no larceny. *Ib.*

Per Bramwell B., and Brett, J., that the authority of the clerk authorized the parting with the possession and property in the entire sum laid down on the counter. *Ib.*

d. Where Possession obtained animus furandi.

Felonious Intention at time Goods obtained.]—To constitute larceny, the felonious intention must exist in the mind at the time the property is obtained; for if it is obtained by fair contract and afterwards fraudulently converted it is no felony. *Reg. v. Charlewood*, 1 Leach, C. C. 409; 2 East, P. C. 689.

A surveyor of highways, having authority to order gravel for roads, ordering gravel as usual and applying it to his own use is not guilty of

larceny, unless it appears that he did not mean to pay for it. *Reg. v. Richardson*, 1 F. & F. 488.

The prisoner went into a shop in London, and purchased jewellery, and said that he would pay in cash, and the seller agreed to deliver the goods at a coach-office belonging to an inn, where the prisoner stated that he lodged. The seller made out an invoice and took the goods there, when the prisoner said he had been disappointed in receiving some money he expected by letter. Just afterwards a twopenny post letter was put into his hands, which he opened in the presence of the seller, and said he had to meet a friend at Tom's Coffee-house at seven, who would supply the money. The goods were left at the coach-office, and the seller went home. The prisoner had taken a place in the mail, but he countermanded that, and absconded with the goods. The seller swore that he considered the goods sold if he got his cash, but not before. It was left to the jury to say whether the prisoner had any intention of buying and paying for the goods, or whether he gave the order merely to get possession of them to convert them to his own use. The jury found the latter, and the prisoner was convicted, and the conviction was held right by the judges. *Reg. v. Campbell*, Car. C. L. 280; 1 M. C. C. 179.

A. and B., pretending that one of them was a sea captain and a Frenchman unable to speak English, offered to the prosecutrix a dress for sale at 25s., saying that if she would give that price for it, she would have another dress, which was produced, worth 12s., into the bargain. She agreed to this, and took a sovereign and a shilling from her pocket. While she was holding the money, A. or B. opened her hand and took it out, though not forcibly. He then declined to take the other 4s., but laid down the dress first produced, and refused to let her have the other. The dress proved to be of little value.—Held, that they were properly convicted of larceny. *Reg. v. Morgan*, Dears. C. C. 395; 6 Cox, C. C. 408; 18 Jur. 1085.

The prosecutor sold onions to the prisoners, who agreed to pay ready money for them. The onions were unloaded at a place indicated by the prisoners, and the prosecutor was then induced to make out and sign a receipt which they got from him, and then refused to restore the onions or pay the price. The jury convicted them of larceny, and said that they never intended to pay for the onions, and that the fraud was meditated by them from the beginning.—Held, that the conviction was right. *Reg. v. Slowly*, 12 Cox, C. C. 269; 27 L. T. 803.

Obtaining a horse under the pretext of hiring it for a day, and immediately selling it, is felony, if the jury finds the hiring was animo furandi. *Reg. v. Pear*, 1 Leach, C. C. 212; 2 East, P. C. 685, 697. And see *Reg. v. Tunnard*, 2 East, P. C. 687; 1 Leach, C. C. 214, n.

A. hiring a horse and riding it away from a livery-stable, and afterwards selling it, cannot be convicted of larceny unless he had the intention of stealing the horse when he originally hired it, and that is a question for the jury. *Reg. v. Cole*, 3 Cox, C. C. 340.

Obtaining a post-chaise by hiring, with a felonious intent to convert it to the use of the hirer, is felony, although the contract of hiring was not for any definite time. *Reg. v. Semple*, 1 Leach, C. C. 420; 2 East, P. C. 691.

If goods are delivered to a person on hire, and he takes them away, animo furandi, he is guilty of larceny, although no actual conversion of them by sale or otherwise is proved. *Reg. v. Janson*, 4 Cox, C. C. 82.

A. hired a horse and gig with the felonious intention of converting them to his own use, and afterwards offered them for sale, but no sale took place.—Held, nevertheless, that he was guilty of larceny. *Id.*

To constitute a larceny by a party to whom goods have been delivered on hire, there must not only be an original intention to convert them to his own use, but a subsequent actual conversion; and a mere agreement by the hirer to accept a sum offered for the goods is not such a conversion, if the party who makes the offer does not intend to purchase unless his suspicions, as to the honesty and right of the vendor to sell, are removed. *Reg. v. Brooks*, 8 C. & P. 295.

A landlord went to his tenant (who had removed all his goods) to demand rent amounting to 12l. 10s., taking with him a receipt ready written and signed; the tenant gave 2l., and asked to look at the receipt. It was given to him, and he refused to return it or to pay the remainder of the rent. It was proved by the landlord, that, at the time he gave to the tenant the receipt, he thought the tenant was going to pay him the rent; and that he should not have parted with the receipt unless he had been paid all the rent; but that when he put the receipt into the tenant's hand he never expected to have the receipt again; and that he did not want the receipt again, but wanted his rent to be paid.—Held, a larceny; and that the fact of the tenant giving the 2l. made no difference. *Reg. v. Rodway*, 9 C. & P. 784.

Where a prisoner having offered to accommodate the prosecutor with gold for notes, the latter put down a number of bank notes for the purpose of their being exchanged, which the prisoner took up and ran away with.—Held, a larceny, if the jury believed that he intended to run away with them at the time, and not to return the gold. *Reg. v. Oliver*, 2 Russ. C. & M. 122; 4 Taunt. 274.

To obtain a bill of exchange from an indorsee, under a pretence of getting it discounted, is felony, if the jury finds that the indorsee did not intend to leave the bill in the prisoner's possession without the money, and that he undertook to discount it with a preconcerted design to convert its produce to his own use. *Reg. v. Aickles*, 1 Leach, C. C. 294; 2 East, P. C. 675.

Where a person went into a shop for the purpose of purchasing a ruby pin, and after selecting one, which was put into a box, while the young man who was serving him was absent for about a minute, took it out of the box, and put it into his stock, and afterwards went into the shawl department of the shop to purchase other articles, saying that he would return and pay for both together, but was allowed to go away without inquiry being made as to whether he had paid in the shawl department, and a bill, including the price of the pin, was sent the next day to the house where he was residing.—Held, on the trial of the prisoner for stealing the pin, that, under these circumstances, it was for the jury to say whether there was any intention to steal the pin, and whether there was or was not credit given for it. *Reg. v. Box*, 9 C. & P. 126.

A., bargaining with B. about some waistcoats,

said, "You must go to the lowest price, as it will be ready money." B. said, "Then you shall have them for 12s." to which A. assented. A. then said he should put the waistcoats into his gig, which was then standing at the door. B. replied, "Very well." A. drove off with the waistcoats without paying for them, and absconded for two years. The jury returned the following verdict:—"In our opinion the waistcoats were parted with conditionally that the money was to be paid at the time, and that A. took them with a felonious intent:"—Held, a larceny in A. *Reg. v. Cohen*, 2 Den. C. C. 249.

Getting goods delivered into a hired cart, on the express condition that the price will be paid for them before they are taken from the cart, and then getting them from the cart without paying the price, will be larceny, if the prisoner never had any intention of paying, but had, ab initio, the intention to defraud. *Reg. v. Pratt*, 1 M. C. C. 250.

Taking goods though the prisoner has bargained to buy, is felonious, if by the usage the price ought to be paid before they are taken, and the owner did not consent to their being taken, and the prisoner when he bargained for them did not intend to pay for them, but meant to get them into his possession, and dispose of them for his own benefit without paying for them. *Reg. v. Gilbert*, 1 M. C. C. 185.

A gipsy, obtaining money and goods under pretence of practising witchcraft, without an intention to return them, is properly indicted for larceny. *Reg. v. Bunce*, 1 F. & F. 523.

Question for Jury.]—A., carrying on business on his own account, entered into an engagement with B. to sell goods for him, and for certain purposes to be his servant. B. entrusted A. with certain goods to dispose of in a particular way. A. converted them to his own use:—Held, that it was a question for the jury to say whether, when A. received the goods, he had the intention of misappropriating them. *Reg. v. Waller*, 10 Cox, C. C. 360; *S. P., Reg. v. Cole*, 3 Cox, C. C. 340.

To obtain property by fraud, and under a preconcerted plan to rob, is felony, but the animus furandi must be found by the jury. *Reg. v. Horner*, 1 Leach, C. C. 270; *S. P., Reg. v. Bow*, 9 C. & P. 126.

Evidence of Tortious Conversion.]—Non-delivery upon request is evidence of a tortious conversion. *Reg. v. Semple*, 1 Leach, C. C. 424; 2 East, P. C. 691.

Possession obtained from Servant without Authority.]—Wheat, not the property of the prosecutor, but which had been consigned to him, was placed in one of his storehouses, under the care of a servant, E., who was to deliver it only to the orders of the prosecutor, or his managing clerk. A., who was in the employ of the prosecutor, obtained the key of the storehouse from E., and was allowed to remove a quantity of the wheat, upon his representation to E. that he had been sent by the clerk, and was to take the wheat to a railway station. This representation was false, and he subsequently disposed of the wheat:—Held, that he was guilty of a larceny of the wheat. *Reg. v. Robbins*, Dears. C. C. 418; 6 Cox, C. C. 420; 18 Jur. 1058.

To obtain goods by false pretences from the

servant of the owner, to whom they were delivered for the purpose of being carried to a customer, who had purchased them, is a taking from the possession of the master; and if so taken, with a preconcerted design to steal them, amounts to felony. *Reg. v. Wilkins*, 1 Leach, C. C. 520; 2 East, P. C. 673.

Where a man pretended to be the servant of a person who had bought a chest of tea deposited at the company's warehouse, got a request paper and permit for the chest, and took it away with the assent of a person in the East India Company's service, who had the charge of it:—Held, to be felony. *Reg. v. Ilnoch*, R. & R. C. C. 163.

S., bailee of P.'s mare, took her to certain livery-stables, and paid P. a balance due to him, after deducting money due for the keep of the mare, and told P. that she was at the livery-stables. P. sent word to the stable-keeper not to let S. have the mare again, and twice refused S. permission to ride the mare. S., after P. had left the town, obtained the mare from the ostler at the livery-stables by a false statement, and never returned her:—Held, that S. was rightly convicted of larceny. *Reg. v. Stear*, 2 C. & K. 988; 1 Den. C. C. 349; T. & M. 11; 18 L. J., M. C. 30; 13 Jur. 41.

A carman having orders to deliver goods to a certain person, in mistake delivered them to another person, who appropriated them to his own use:—Held, that he did not part with the property in the goods by delivering them to a wrong party; and that the latter, appropriating them to his own use, was guilty of larceny. *Reg. v. Little*, 10 Cox, C. C. 559.

Getting a parcel from a carrier's servant, by falsely pretending to be the person to whom it is directed, if it is taken animus furandi, is a larceny; for the servant has no authority to part with it but to the right person. *Reg. v. Longstreeth*, 1 M. C. C. 137.

On the trial of an indictment for larceny it appeared that the prisoner having given the prosecutor an order for certain goods, they were sent by a servant with directions not to part with them without the money. On the way the servant was met by the prisoner, who said the goods were for him and took them, giving two counterfeit half-crowns in payment:—Held, that he was properly indicted for larceny. *Reg. v. Webb*, 5 Cox, C. C. 154.

A., in the hearing of B., told his servant to go to H. and pay him some money, upon which B. offered to take the money for A., falsely stating that he lived only six doors from H. Induced by the offer of B., A. delivered the money to him to carry to H. B. appropriated the money to his own use. He was indicted for larceny of the money, and found guilty, the jury stating that their verdict was grounded on their belief that he had obtained the money by a trick, intending at the time to appropriate it to his own use:—Held, that the conviction was right. *Reg. v. Brown*, Dears. C. C. 616; 2 Jur., N. S. 192.

J., owner of a watch, placed it with the seller to be regulated. The seller had no authority to deliver it to any one but J., or some one commissioned by him to receive it. By the fraud of the prisoner the seller was induced to believe that J. had desired the watch to be sent by post, inclosed in a letter to J., to the care of the postmaster at B. The postmaster, through the fraud of the prisoner, was induced to deliver the letter containing the watch to him, believing him to be

J. or his agent :—Held, that the prisoner, having appropriated the watch to his own use, was guilty of larceny of it from the owner. *Reg. v. Kay*, Dears. & B. C. C. 231; 7 Cox, C. C. 298; 26 L. J., M. C. 119; 3 Jur., N. S. 546.

By a Trick.—At a colliery, where coal was sold by retail, it was the practice for the carts, when loaded, to be taken to a weighing machine in the colliery yard, where they were weighed, and the price of the coal paid. B. went to the yard and asked for a load of soft coal: his cart was accordingly loaded by a servant of the prosecutor with that description of coal, and he was then left to take it to be weighed, and pay for it. He, however, covered over the top of the coal in the cart with slack (an inferior description of coal), and then went to the weighing machine, and told the clerk he had got slack; the clerk accordingly weighed the cart, and charged for its contents as slack. B. paid for the coal as slack, and went away with it :—Held, that he was guilty of larceny of the soft coal. *Reg. v. Bramley*, L. & C. 21; 8 Cox, C. C. 468; 7 Jur., N. S. 478; 4 L. T. 309; 9 W. R. 555.

Where a prisoner had obtained letters from the post-office by falsely representing that he was sent for them by the person to whom they were addressed :—Held, that if he then meant to steal them he might be convicted of larceny. *Reg. v. Gillings*, 1 F. & F. 36.

Ring the Changes.—J. and W., acting in concert, and intending to defraud S., entered his shop, and by means of an artifice induced him to draw a cheque on his bankers for £2l., payable in the name of J., and then to accompany J. to the bank to see it paid, on the understanding that they were to return to finish the transaction by the payment to S. of forty-two sovereigns, and that W. was to remain at the shop till J. and S. went and returned from the bank. At the bank, by the desire of S., the banker handed four ten-pound notes and two sovereigns to J. in the presence of S. S. and J. left the bank together, and while on their way back to S.'s shop, J. went into an inn yard, and, promising to return immediately, absconded with the four ten-pound notes and the two sovereigns, which he and W. (who in the meantime had gone off from the shop with the forty-two sovereigns) appropriated to their own use :—Held, that the misappropriation of the notes and two sovereigns was larceny, S. never having parted with the property and possession in them, and J. having no more than the bare custody of the money which he had carried off. *Reg. v. Johnson*, 2 Den. C. C. 310; T. & M. 612; 5 Cox, C. C. 372; 21 L. J., M. C. 32; 15 Jur. 1113.

A. went to a shop, and asked a boy there to give him change for a half-crown; the boy gave him two shillings and sixpennyworth of copper. The prisoner held out a half-crown, which the boy touched, but never got hold of it, and the prisoner ran away with the two shillings and the copper :—Held, a larceny of the two shillings and the copper. *Rea v. Williams*, 6 C. & P. 390.

The prisoner with another man went into the shop of the prosecutrix and asked for a pennyworth of sweetmeats, for which he put down a florin. The prosecutrix put it into a money-drawer, and put down a shilling and sixpence in silver and fivepence in copper in change, which the prisoner took up. The other man said, "you

need not have changed," and threw down a penny, which the prisoner took up; and the latter then put down a sixpence in silver and sixpence in copper on the counter, saying, "here, mistress, give me a shilling for this." The prosecutrix took a shilling out of the money-drawer and put it on the counter, when the prisoner said to her, "you may as well give me the two-shilling-piece and take it all." The prosecutrix took from the money-drawer the florin she had received from the prisoner, and put that on the counter, expecting she was to receive two shillings of the prisoner's money in exchange for it. The prisoner took up the florin; and the prosecutrix took up the silver sixpence and the sixpence in copper put down by the prisoner, and also the shilling put down by herself, and was putting them into the money-drawer, when she saw she had only got one shilling's-worth of the prisoner's money; but at that moment the prisoner's companion drew away her attention, and, before she could speak, the prisoner pushed his companion by the shoulder, and both went out of the shop :—Held, that the property in the florin had not passed to the prisoner, and that he was rightly convicted of larceny. *Reg. v. McKale*, 1 L. R., C. C. 125; 18 L. T. 335; 16 W. R. 800; 11 Cox, C. C. 32.

Possession in Tradesman.—If a person, having ordered a tradesman to bring goods to his house, looks out a certain quantity, asks the price of them, separates them from the rest, and then, by sending the tradesman home on pretence of wanting other articles, takes the opportunity of running away with the goods so looked out with intent to steal them, it is larceny; for, as the sale was not completed, the possession of the property still remained in the tradesman. *Rea v. Sharpless*, 1 Leach, C. C. 92; 2 East, P. C. 675.

Money obtained by Threat—Payment against Owner's will.—A. acted as auctioneer at a mock auction. He knocked down some cloth for 26s. to B., who had not bid for it, as A. knew. B. refused to take the cloth or to pay for it; A. refused to allow her to leave the room unless she paid. Ultimately she paid the 26s. to A., and took the cloth. She paid the 26s. because she was afraid. A. was indicted for, and convicted of, feloniously stealing these 26s. :—Held, that the conviction was right, because, if the force used to B. made the taking a robbery, larceny was included in that crime; if the force was not sufficient to constitute a robbery, the taking of the money nevertheless amounted to larceny, as B. paid the money to A. against her will, and because she was afraid. *Reg. v. McGrath*, 1 L. R., C. C. 205; 17 L. J., M. C. 7; 21 L. T. 543; 18 W. R. 119; 11 Cox, C. C. 347.

Held, also, that, under the circumstances, it was not necessary that the jury should be asked whether B. paid the money against her will, as from the evidence it was clear that there could have been no doubt in the minds of the jury that the money was so paid. *Id.*

The prosecutor met a man and walked with him. During the walk the man picked up a purse which he said he had found, and that it was dropped by the prisoner. He then gave it to the prisoner, who opened it, and there appeared to be about 40l. in gold in it. The prisoner appeared grateful, and said he would reward the man and the prosecutor for restoring it. The

three then went to a public-house and had some drink. The prisoner then shewed some money, and said if the man would let him have 10*l.*, and let him go out of his sight, he would not say what he would give him. The man handed what seemed to be 10*l.* in money, and the prisoner and prosecutor then went out together. They then returned, and the prisoner appeared to give the 10*l.* back and 5*l.* more. The prisoner then said he would do the same for the prosecutor, and by that means obtained 3*l.* in gold and the prosecutor's watch and chain from him. The prisoner and the man then left the public-house, and made off with the 3*l.* and the watch and chain. At the trial the prosecutor said he handed the 3*l.* and the watch and chain to the men in terror, being afraid they would do something to him, and not expecting they would give him 5*l.* :—Held, that he was properly convicted of larceny upon this evidence. *Reg. v. Hazell*, 11 Cox, C. C. 597 ; 23 L. T. 562.

The prosecutrix engaged the prisoner to grind scissors, and paid him when they were ground. She then handed him six knives to grind. He ground them and demanded 5*s.* 6*d.* for them, the ordinary charge being 1*s.* 3*d.* She refused to pay 5*s.* 6*d.* The prisoner then threatened her, and said he would make her pay, and ultimately, in consequence of her fears, she gave the prisoner 5*s.* 6*d.* The prisoner was indicted for larceny of the 5*s.* 6*d.*, and the chairman on the trial directed the jury that, if the money was obtained by frightening the owner, the prisoner was guilty of larceny. The jury having convicted, the court upheld the conviction. *Reg. v. Lovell*, 8 Q. B. D. 185 ; 50 L. J., M. C. 91 ; 44 L. T. 319 ; 30 W. R. 416 ; 45 J. P. 407.

e. Where Possession originally obtained bonâ fide—Subsequent Felonious Intent.

Whether Possession or Custody of thing obtained.—If a person is allowed to have possession of a chattel and he converts it to his own use, it is not larceny, unless he had an intention of stealing it when he obtained possession of it ; but if he has merely the custody of a chattel, he is guilty of larceny if he disposes of it, although he did not intend to do so at the time when he received it into his custody. *Reg. v. Jones*, Car. & M. 611 ; *S. P.*, *Reg. v. Evans*, Car. & M. 633.

To constitute larceny, the felonious intention must exist in the mind at the time the property is obtained ; for if it is obtained by fair contract, and afterwards fraudulently converted, it is no felony. *Reg. v. Charlewood*, 1 Leach, C. C. 409 ; 2 East, P. C. 689.

A watchmaker, to whom a watch was given by the owner for the purpose of having it regulated, disposed of the watch, and applied the proceeds to his own purposes :—Held, that this was no larceny, as the watchmaker had in the first instance obtained the possession of the watch rightfully, and so, unless there was a taking in the first instance animo furandi, no subsequent dishonest dealing with the chattel could amount to larceny. *Reg. v. Thistle*, 3 New Sess. Cas. 702 ; 2 C. & K. 842 ; T. & M. 204 ; 1 Den. C. C. 502 ; 3 Cox, C. C. 573 ; 19 L. J., M. C. 66 ; 13 Jur. 1035. *S. P.*, *Reg. v. Levy*, 4 C. & P. 241.

The prisoner found two heifers which had strayed, and put them on his own marshes to graze. Soon afterwards he was informed by S.

that they had been put on S.'s marshes and had strayed, and a few days afterwards that they belonged to H. The prisoner left them on his marshes for a day or two and then sent them to a long distance as his own property. He then told S. that he had lost them, and denied all knowledge of them. The jury found (1) that at the time the prisoner found the heifers he had a reasonable expectation that the owner could be found, and that he did not believe that they had been abandoned by the owner. (2) That at the time of finding them he did not intend to steal them, but that the intention to steal came on him afterwards. (3) That the prisoner when he sent them away did so for the purpose and with the intention of depriving the owner of them and appropriating them to his own use :—Held, that a conviction of larceny could not be sustained. *Reg. v. Matthews*, 28 L. T. 645.

If the owner parts with the possession of goods for a special purpose, and the bailee, when that purpose is executed, neglects to return them, and afterwards disposes of them ; if he had not a felonious intention when he originally took them, his subsequent withholding and disposing of them will not constitute a new felonious taking, or make him guilty of felony. *Reg. v. Banks*, R. & C. C. 441.

A drover employed to drive pigs, and paid the expenses of driving them, being paid wages by the day, but having the liberty to drive the cattle of any other person, at the end of his journey sold the pigs, and converted the proceeds to his own use :—Held, not to be larceny, as at the time he received the pigs into his custody he had no intention of appropriating them to his own use ; and that he was merely a bailee, and not a servant. *Reg. v. Hey*, T. & M. 209 ; 1 Den. C. C. 602 ; 2 C. & K. 983 ; 3 Cox, C. C. 582 ; 14 Jur. 164.

A prisoner received the prosecutor's horse to be agisted, and after a short time sold it :—Held, not larceny. *Reg. v. Smith*, 1 M. C. C. 413.

Where the jury found that one who assisted in taking another's goods from a fire in his presence, but without his desire, and who afterwards concealed and denied having them, yet took them honestly at first, and that the evil intention to convert them came on the taker afterwards, held no larceny. *Reg. v. Leigh*, 2 East, P. C. 694 ; 1 Leach, C. C. 411, n.

If a fraudulent conversion takes place after the privacy of contract is determined, it is felony. *Reg. v. Charlewood*, 1 Leach, C. C. 409 ; 2 East, P. C. 689.

Where a man drove away a flock of lambs from a field, and in doing so inadvertently drove away along with them a lamb, the property of another person, and as soon as he discovered that he had done so sold the lamb for his own use, and then denied all knowledge of it :—Held, that as the act of driving the lamb from the field in the first instance was a trespass, as soon as he resolved to appropriate the lamb to his own use the trespass became a felony. *Reg. v. Riley*, Dears. C. C. 149 ; 6 Cox, C. C. 88 ; 22 L. J., M. C. 48 ; 17 Jur. 189.

Question for Jury.—Where a party removed a valuable article, part of a wreck, from a wharf on which it had been placed, and had taken it into his own house, and had afterwards denied the possession of it :—Held, that the question for

the jury on an indictment for larceny was, whether, at the time he originally took it, he meant to steal it. *Reg. v. Hove*, 3 F. & F. 315.

A., carrying on business on his own account, entered into an engagement with B. to sell goods for him, and for certain purposes to be his servant. B. entrusted A. with certain goods to dispose of in a particular way. A. converted them to his own use:—Held, that it was a question for the jury to say whether, when A. received the goods, he had the intention of misappropriating them. *Reg. v. Waller*, 10 Cox, C. C. 360.

Obtaining Possession from Wife of Owner.]—

If a man and the owner's wife jointly take away the husband's goods, it may be larceny in the man, though he was acting jointly with the wife. *Rea v. Tolfree*, 1 M. C. C. 243.

A prisoner cannot be found guilty of stealing goods, if it appears that he could not otherwise get them than by the delivery of the prosecutor's wife, in which case it may be presumed that he received them from her. *Rea v. Harrison*, 1 Leach, C. C. 47; 2 East, P. C. 559.

—Where Man is an Adulterer.]—

There is such a unity of interest between husband and wife, that ordinarily the wife cannot steal the goods of the husband, nor can an indifferent person steal the goods of the husband by the delivery of the wife; and if the wife delivers the goods of the husband to an indifferent person, for that person to convert them to his own use, this is no larceny; but if the person to whom the goods are delivered by the wife is an adulterer, it is otherwise, and an adulterer can be properly convicted of stealing the husband's goods, though they are delivered to him by the wife. *Reg. v. Tollett*, Car. & M. 112.

If no adultery has actually been committed by the parties, but the goods of the husband are removed from the house by the wife and the intended adulterer, with an intent that the wife should elope with him, and live in adultery with him, this taking of the goods is, in point of law, larceny. *Id.*

The prisoner, who was previously on familiar terms with the prosecutor's wife, hired a cart, and told the owner to send it to the prosecutor's house to convey furniture for the woman whom he would find there to another address which he gave to the carter, and where the wife had previously engaged rooms without her husband's knowledge. The cart was sent as directed and the furniture loaded, the wife being present but the husband and the prisoner absent during the loading. The wife accompanied the cart to the lodgings. The prisoner did not appear at the lodgings till the next night; he then lived with her there for some days, using the furniture. The jury convicted the prisoner of stealing the furniture, and the court affirmed the conviction. *Reg. v. Flatman*, 14 Cox, C. C. 396; 42 L. T. 159; 44 J. P. 314.

The prisoner eloped with the prosecutor's wife, travelling in a cart which the wife took from her husband's yard. The prisoner sold the pony, cart, and harness, in the presence of the wife, who did not object to the sale and received the proceeds, which she retained, after paying the prisoner a sovereign, which he had expended in obtaining lodgings while they were living in a state of adultery:—Held, that the presence of

the woman did not alter the offence; that the fact that he negotiated the sale and received part of the proceeds was sufficient; that from the circumstances, the prisoner must have known that the pony, cart and harness, were not the property of the woman; and that, if the jury were of opinion that he had that knowledge, they were bound to convict him. *Reg. v. Harrison*, 12 Cox, C. C. 19.

When a wife absconds from the house of her husband with her avowterer, the latter cannot be convicted of stealing the husband's money missed on their departure, unless the avowterer is proved to have taken some active part either in carrying away or in spending the money stolen. *Reg. v. Taylor*, 12 Cox, C. C. 627.

Where a man assists a wife in carrying off what he knows to be her husband's property, and goes away with her with the intention of committing adultery, he is guilty of larceny; and the facts that he was in the husband's service, and acted under the wife's directions in removing the property, afford no answer to the charge. *Reg. v. Muttons*, L. & C. 511; 10 Cox, C. C. 50; 34 L. J., M. C. 54; 11 L. T. 642; 13 W. R. 326.

—Evidence.]—An adulterer cannot be convicted of stealing the goods of the husband brought by the wife alone to his lodgings, and placed by her in the room in which the adultery was afterwards committed, merely upon evidence of their being found there; but it would be otherwise if the goods could be traced in any way to his personal possession. *Reg. v. Rosenberg*, 1 C. & K. 233.

A. assisting the wife of B. to take B.'s goods, which are afterwards used by them in common, without the consent of B., is evidence to warrant a conviction against A. of larceny. *Reg. v. Thompson*, 1 Den. C. C. 549; T. & M. 294; 14 Jur. 488.

Delivery by the wife of her husband's goods to her adulterer, he having knowledge that she had taken them without her husband's authority, is sufficient to support an indictment for larceny against the adulterer. *Reg. v. Featherstone*, Dears. C. C. 369; 2 C. L. R. 774; 6 Cox, C. C. 376; 23 L. J., M. C. 127; 18 Jur. 538.

If a person merely assists a married woman, who has not committed, or intended to commit, adultery, in carrying away the goods of her husband without the knowledge and consent of the latter, though with intent to deprive the latter of his property, he cannot be convicted of stealing the goods. *Reg. v. Avery*, Bell, C. C. 150; 8 Cox, C. C. 184; 28 L. J., M. C. 185; 5 Jur., N. S. 577; 32 L. T., O. S. 138; 7 W. R. 431.

B., watching his opportunity when the prosecutor was absent, took away the prosecutor's wife, and with her several boxes filled with the prosecutor's property. B. and the wife were found living together in adultery. The property was all in their lodgings:—Held, that he was indictable for stealing the property of the prosecutor, as he took the property under such circumstances that the assent of the husband to the taking could not be presumed. *Reg. v. Berry*, Bell, C. C. 95; 28 L. J., M. C. 70; 5 Jur., N. S. 228; 32 L. T., O. S. 329; 7 W. R. 240.

—Wife's Personal Clothes.]—The prisoner, who lodged in the house of the prosecutor, agreed

with his wife that they should go away, and live together in adultery. The prisoner left the house, and was followed by the wife of the prosecutor. They were afterwards overtaken on the road in company together, the prisoner carrying a handbox containing the wife's wearing apparel. He was convicted upon an indictment for stealing the property so found upon him, the property being laid as that of the husband:—Held, that the conviction could not be sustained. *Reg. v. Fitch*, Dears. & B. C. C. 87; 7 Cox, C. C. 269; 26 L. J., M. C. 169; 3 Jur., N. S. 524.

If a wife elopes with an adulterer who takes her clothes with them, the taking is a larceny; and it is as much a larceny to steal her clothes, which are her husband's property, as it would be to steal anything else that is his property. *Reg. v. Tollett*, Car. & M. 112. *But see preceding case.*

f. Where Delivery does not Alter the Possession in Law.

Possession of Agent that of Principal.—If a person is allowed to have possession of a chattel, and he converts it to his own use, it is not larceny, unless he had an intention of stealing when he obtained possession of it, but if he has merely the custody of a chattel, he is guilty of a larceny if he disposes of it, although he did not intend to do so at the time when he received it into his custody. *Reg. v. Jones*, Car. & M. 611. *S. P.*, *Reg. v. Evans*, Car. & M. 633.

A lady wishing to get a railway ticket (the price of which was 10s.), finding a crowd at the pay-place at the station, asked the prisoner, who was nearer in to the pay-place, to get a ticket for her, and handed him a sovereign to pay for it. He took the sovereign intending to steal it, and instead of getting the ticket ran away:—Held, that he was guilty of larceny at common law. *Reg. v. Thompson*, 9 Cox, C. C. 244; L. & C. C. C. 225; 32 L. J., M. C. 53; 8 Jur., N. S. 1184; 7 L. T. 432; 11 W. R. 40.

On an indictment for larceny, it appeared that the prisoner lived in the prosecutor's house and acted as nurse to his sick daughter, the prisoner having board and lodging and occasional presents for her services, but no wages. While the prisoner was so residing, the prosecutor's wife gave the prisoner money to pay a coal bill, which money the prisoner kept and brought back a forged receipt for the coal bill:—Held, that this was a larceny of the money, *Reg. v. Smith*, 1 C. & K. 428.

Possession of Servant that of Master.—A servant, whose duty it was to pay his master's workmen, and for this purpose to obtain the necessary money from the cashier, fraudulently represented to the cashier that the wages due to one of the workmen were larger than they really were, and so obtained from him a larger sum than was in fact necessary to pay the workmen. He did this intending at the time to appropriate the balance to his own use. Out of the sum so received he paid the workmen the wages really due to them, and appropriated the balance to his own use:—Held, that, whether the obtaining the money in the first instance was larceny, or obtaining money by false pretences, the money while it remained in his custody was the pro-

perty and in the possession of the master, and therefore the misappropriation of it by the servant was larceny. *Reg. v. Cooke*, 1 L. R., C. C. 295; 40 L. J., M. C. 68; 24 L. T. 108; 19 W. R. 389; 12 Cox, C. C. 10.

A servant intrusted with the care of his master's property, and who subsequently appropriates it to his own use, is guilty of larceny at the time he so disposes of it, and not at any previous time he may have intended to steal it, the principal of animus furandi not applying to the relation of master and servant. *Reg. v. Roberts*, 3 Cox, C. C. 74.

A. employed B. to take his barge from S. to E., and paid him his wages in advance, and gave him a separate sum of three sovereigns to pay the tonnage dues. B. took the barge sixteen miles, and paid tonnage dues to an amount rather under 2l., and appropriated the remaining sovereign to his own use:—Held, a larceny. *Reg. v. Goode*, Car. & M. 582; *S. P.*, *Reg. v. Beaman*, Car. & M. 595.

If a banker's clerk tells a customer of the house that he has paid in money on his account, and thereby induces the customer to give him a cheque for the amount, which he receives the money for, and afterwards makes fictitious entries in the books, to prevent a discovery of the transaction, it is a felonious taking of the money from the banker, without his consent, and not an obtaining of it under false pretences. *Reg. v. Hammond*, 2 Leach, C. C. 1083; 4 Taunt. 304; R. & R. C. 221.

It is felony for the confidential clerk of a merchant to take a bill of exchange, unindorsed, from the bill box, and convert it to his own use, although he was in the habit of transacting the cash concerns of the house from week to week; for, as it had not been delivered to him for such purpose by his employer, it is a tortious taking from the possession of the master. *Reg. v. Chipchase*, 2 Leach, C. C. 699; 2 East, P. C. 567.

If a servant, to whom goods have been delivered by his master to carry to a customer, sells them and converts the money to his own use, he is guilty of felony; for the possession is not out of the master by such delivery. *Reg. v. Bass*, 1 Leach, C. C. 258; 2 East, P. C. 566, 698.

A servant's duty was to give out materials to be wrought up, and pay the workmen when the work was finished, and for this purpose he received cash from his masters, and at the end of each week he accounted with them for sums so received and paid. The cash was kept by him, but he was not authorized to apply the money in any other way. He paid C. 13s., and fraudulently charged his employers as having paid 14s. 8d., and appropriated the 1s. 8d. to his own use:—Held, to amount to larceny. *Reg. v. Low*, 10 Cox, C. C. 168; 13 L. T. 642; 14 W. R. 286.

A man was indicted for larceny as a servant. He was groom in the service of the prosecutor, and was supplied by his master with money to pay for the keep of the stallion of which he had the charge. In the course of his employment he stated that he had paid three sums of 7s. 2d., 7s. 4d., and 7s. 6d., to one Thomas Payne, which was untrue, and appropriated these sums to his own use:—Held, that it was not larceny. *Reg. v. Dartnell*, 20 L. T. 1020.

Where a servant received money from his master in order to pay the wages of work people therewith, and in the book in which the account

of the moneys so paid was kept by the master entries were found charging the master with more money than the servant had actually disbursed; but there was no proof that he had ever delivered this account to his master:—Held, that this did not amount to larceny in the servant. *Reg. v. Butler*, 2 C. & K. 340.

A shopman was authorized to sell his master's goods at the price marked upon them, but at nothing less. He sold a pair of trousers at a lower price than that marked, and embezzled the money:—Held, not to be a larceny of the trousers. *Reg. v. Brockett*, 4 Cox, C. C. 274.

A miller's foreman, employed to sell goods and receive the money, sold some to a customer, who paid him for them. He did not enter the sale in his books, or account for the price according to the usual course of business, but concealed the whole transaction, and appropriated the money:—Held, that there being an actual binding sale as between the buyer and the employer, he could not be convicted of stealing the goods, although he was guilty of embezzling the price. *Reg. v. Betts*, Bell, C. C. 90; 8 Cox, C. C. 140; 28 L. J., M. C. 69; 5 Jur., N. S. 274; 32 L. T., O. S. 339; 7 W. R. 239.

If a servant receives from his master goods to sell, and appropriates them to his own use, he is not guilty of embezzlement but larceny. *Reg. v. Hawkins*, 4 Cox, C. C. 224.

If a servant takes his master's property, and hands it over to another as a gift, it is as much a felony as if he takes it to a pawnbroker and pledges it. *Reg. v. White*, 9 C. & P. 344.

Where property, which the prosecutor had bought, was weighed out in the presence of his clerk, and delivered to his carman's servant to cart, who let other persons take away the cart and dispose of the property for his benefit jointly with that of the others, the carman's servant as well as the others are guilty of larceny at common law. *Reg. v. Harding*, R. & R. C. C. 125.

The prisoner was occasionally employed as a clerk to the prosecutors, and having received from them a cheque on their bankers, payable to a creditor, for the purpose of giving it to the creditor, appropriated it to his own use:—Held, a larceny of the cheque. *Reg. v. Metcalf*, 1 M. C. C. 433.

It is larceny in the servant of the drawer of a cheque to whom it is given to deliver to a third person, to appropriate the value to his own use. *Reg. v. Heath*, 2 M. C. C. 33.

A., who intended to sell his mare, sent his servant to M. fair, his servant having no authority either to sell the mare or deal with her in any way. The prisoner asked the servant the price and desired him to trot her out; he then talked to two other men, and these two men then came up and persuaded the servant to exchange the mare for a horse they had, and they would give 24*l.* for the chop. They changed saddles, and without giving any money, rode away with the mare, leaving the servant with a horse of little value:—Held, that as the servant had the mere charge of the mare, and had no right to deal with the property in her, the prisoner could be convicted of stealing the mare. *Reg. v. Sheppard*, 9 C. & P. 121.

Possession by Drover or Agister, &c.]—A drover of cattle was employed by a grazier in the country to drive eight oxen to London; his instructions were, that, if he could sell them on

the road, he might; and those he did not sell on the road he was to take to a particular salesman in Smithfield market, who was to sell them for the grazier. The drover sold two on the road, and instead of taking the remaining six to the salesman, drove them himself to Smithfield market, and sold them there, and received the money, which he applied to his own use:—Held, that he could not be convicted either of larceny or of embezzlement. *Reg. v. Goodbody*, 8 C. & P. 665.

On an indictment against a farmer for stealing sheep entrusted to him for agistment, and which he had sold, concealing for upwards of a month the fact of sale, there being some evidence that he had, or might have supposed that he had, some implied authority to sell, or that the prosecutor would not object to it if he realized a good price, the jury was directed that the question was, whether at the time of the sale the prisoner had any reason to suppose that he might sell. *Reg. v. Leppard*, 4 F. & F. 51.

If a man who is hired to drive cattle sells them, it is larceny; for he has the custody only, and not the right to the possession; his possession is the owner's possession, though he is a general drover, at least if he is paid by the day. *Reg. v. McNamie*, 1 M. C. C. 368. See *Reg. v. Hey*, 3 Cox, C. C. 582.

A person hired to drive cattle to a particular place, who sells the same and absconds with the money, is guilty of stealing, though the intention to sell is not conceived till after taking possession of the cattle. *Reg. v. Jackson*, 2 M. C. C. 32.

The prisoner, who was not otherwise in the prosecutor's service, was employed by the prosecutor to drive six pigs from C. to U. On the way he left one at Mr. M.'s, stating that it was tired, and he told the prosecutor that he had done so. The prosecutor told the prisoner to go and ask Mr. M. to keep the pig for him. The prisoner went to Mr. M.'s and sold the pig to Mr. M.:—Held, no larceny. *Reg. v. Jones*, Car. & M. 611.

Possession of Person Hired for Special Purpose.]—It is larceny for a person hired for the special purpose of driving sheep to a fair to convert them to his own use, he having the intention so to do at the time of receiving them from the owner. *Reg. v. Stock*, 1 M. C. C. 87.

If the owner of goods employs a person, not in his service, to take them to a particular place, shew them to a customer, and bring them back, without authorizing him to sell them to or leave them with the customer, and he, instead of taking the goods to the specific place, sells them for his own advantage, he will be guilty of larceny, inasmuch as the felonious intent came upon him at a time when he had the custody only, and not the possession, of the goods. *Reg. v. Harvey*, 9 C. & P. 353.

If a person, not being the servant of the party who intrusts him, receives a parcel containing notes to take to a coach-office, and abstracts the notes on his way there, and applies them to his own use, he is guilty of larceny. *Reg. v. Jenkins*, 9 C. & P. 28.

g. Against Will of the Owner.

Assent of Owner—Effect of.]—The assent of a prosecutor to give facility to the commission of a

larceny, for the purpose of detecting the offenders, does not do away with the felony, although the property was not taken against his will. *Rea v. Egginton*, 2 Leach, C. C. 913; 2 East, P. C. 494, 666; 2 B. & P. 508.

Overtures were made by a person to the servant of a publican, to induce him to join in robbing his master's till. The servant communicated the matter to the master, and some weeks afterwards, the servant, by the direction of his master, opened a communication with the person who had made the overtures, in consequence of which he came to the master's premises. The master having previously marked some money, it was, by his direction, placed upon the counter by the servant, in order that it might be taken up by the party who had come for the purpose. It was so taken up by him:—Held, larceny in such party. *Reg. v. Williams*, 1 C. & K. 195.

A. being somewhat tipsy, lay on the ground partly asleep, and while in that state saw the prisoner take his watch out of his pocket, which he took no steps to prevent, believing that the prisoner, with whom he had been acquainted for some time, was acting solely from friendly motives:—Held, that this evidence would not support a charge of larceny at common law, but disclosed a bailment. *Reg. v. Reeves*, 5 Jur., N. S. 716.

h. Carrying away—Asportation.

Larceny from Person — What sufficient Removal or Severance.—To constitute a stealing from the person, the thing must be completely removed from the person; removal from the place where it was, if it remains throughout with the person, is not sufficient. *Rea v. Thompson*, 1 M. C. C. 78.

But such removal would be sufficient to constitute a simple larceny. *Ib.*

A watch was carried in a waistcoat pocket, with a chain attached passing through a button-hole of the waistcoat, being there secured by a watch-key. The prisoner took the watch out of the pocket and by force drew the chain out of the button-hole, but the watch-key having been caught by a button of the waistcoat, the watch and chain remained suspended:—Held, a sufficient severance to maintain a conviction for stealing from the person. *Reg. v. Simpson*, Dears. C. C. 421; 3 C. L. R. 80; 6 Cox, C. C. 422; 24 L. J., M. C. 7; 18 Jur. 1030.

What sufficient Severance.—Where goods in a shop were tied to a string, which was fastened by one end to the bottom of the counter, and a thief took up the goods and carried them away towards the door as far as the string would permit:—Held, that being no severance, there was no asportation, and consequently that it was not a felony. *Aron*, 2 East, P. C. 556; 1 Leach, C. C. 321, n.

— Gas Stolen.—The prisoner had contracted with a gas company for a supply of gas. The quantity consumed was to be measured by a meter. The gas was conveyed from the company's main through an entrance pipe (the property of the prisoner) to the meter, and from thence by another pipe called the exit pipe to the burners. The prisoner by inserting a connecting pipe into the entrance and exit pipes,

diverted the gas from the meter and thereby avoided paying for the full quantity used:—Held, that there was a sufficient severance of the gas, at the point of junction of the connecting pipe with the entrance pipe, to constitute an asportation. *Reg. v. White*, 3 C. & K. 363; Dears. C. C. 203; 6 Cox, C. C. 213; 22 L. J., M. C. 123; 17 Jur. 536.

Goods in Wagon or Coach.—Where a prisoner set up a long bale upon end in a wagon, and cut the wrapper all the way down with intent to remove the contents, but was apprehended before he had taken anything out of it:—Held, that there was not a sufficient asportation to constitute a larceny. *Rea v. Cherry*, 1 Leach, C. C. 236, n.; 2 East, P. C. 556.

To remove a package from the head to the tail of a wagon, with a felonious intent to take it away, is a sufficient asportation to constitute a larceny; but merely to alter the position of a package on the spot where it lies is not. *Rea v. Cusker*, 1 Leach, C. C. 236; 2 East, P. C. 556.

A prisoner, having lifted up a bag from the boot of a coach, was detected before he had got it out; and it did not appear that it was entirely removed from the space it at first occupied in the boot, but the raising it from the bottom had completely removed each part of it from the space that specific part occupied:—Held, that it was a complete asportation. *Rea v. Walsh*, 1 M. C. C. 14.

Apprehension before Taking.—Where a prisoner stopped the prosecutor, who was carrying a bed on his shoulders, and told him to lay it down, or he would shoot him; and he laid it down on the ground, but before the prisoner could take it up he was apprehended:—Held, that the offence was not completed. *Rea v. Furrell*, 1 Leach, C. C. 322, n.

Abstracting Money from Letter.—If A. asks B., who is not his servant, to put a letter in the post, telling him it contains money, and B. breaks the seal, and abstracts the money before he puts the letter in the post, he is guilty of larceny. *Rea v. Jones*, 7 C. & P. 151.

By Bailees.—A. was convicted of larceny under the following circumstances: he was a common carrier, and employed by the prosecutor to carry a cargo of coals from a ship to a coal-yard belonging to the prosecutor. He carted the coals to the first-mentioned coal-yard, and was engaged for several days in carting them thence to the prosecutor's other yard. He left the first-mentioned coal-yard on one of those days with two carts and a wagon, all laden with coals; before he arrived at the other yard, he delivered the two cart-loads to a third person on his own account, but he duly delivered the wagon-load at the prosecutor's yard:—Held, that the conviction was wrong, the coals having been delivered to A. as a carrier, and there having been no breaking of bulk or other determination of the bailment. *Reg. v. Cornish*, Dears. C. C. 425; 6 Cox, C. C. 432.

If the master or owner of a ship steals some of the goods delivered to him to carry, it is not larceny in him, unless he takes the goods out of their packages. *Rea v. Madox*, R. & R. C. C. 92.

If one employed to carry goods for hire appropriates them to his own use, but does not break

bulk, this is no larceny, although the person so employed was not a common carrier, but was only employed in this particular instance. *Rea v. Fletcher*, 4 C. & P. 544.

A., the owner of a boat, was employed by B., the captain of a ship, to carry a number of wooden staves ashore in his boat; B.'s men were put into the boat, but were under the control of A., who did not deliver all the staves, but took one of them away to the house of his mother:—Held, that this was a bailment of the staves to A., and not a charge only; and that a mere non-delivery of the staves would not have been a larceny in A.; but that if A. separated one of the staves from the rest, and carried it to a place different from that of its destination, with intent to appropriate it to his own use, that was equivalent to a breaking of bulk, and therefore would be sufficient to constitute a larceny. *Rea v. Howell*, 7 C. & P. 325.

If a warehouseman has several bags of wheat delivered to him for safe custody, and he takes the whole of the wheat out of one bag, it is no less a larceny than if he had severed a part from the residue of the wheat in the same bag, and had taken only that part, leaving the remainder of the wheat in the bag. *Rea v. Brazier*, R. & R. C. C. 337.

A. consigned three trusses of hay to B., and sent them by the prisoner's cart; the prisoner took away one of the trusses, which was found in his stable, but not broken up:—Held, no larceny, as the prisoner did not break up the truss. *Rea v. Pratley*, 5 C. & P. 533. *But see now* 24 & 25 Vict. c. 96, s. 3.

What a sufficient Asportation.]—The transfer of a letter by a letter carrier from his pouch to his pocket is a sufficient asportation. *Reg. v. Poynton*, L. & C. 247; 9 Cox, C. C. 249; 32 L. J., M. C. 29; 8 Jur., N. S. 1218; 7 L. T. 434; 11 W. R. 73.

In an indictment for stealing five pints of porter, it appeared that the prisoner was discovered standing by a barrel of porter, out of a hole in which the porter was running into a can on the ground, and that about five pints had run into the can:—Held, that there was a sufficient asportavit proved of the porter in the can. *Reg. v. Wallis*, 3 Cox, C. C. 67.

Two prisoners were charged with stealing four sacks of barley and three sack bags from their master. The prisoners and B. were employed by the prosecutor to winnow barley, which he had mixed with canary seed. One of the prisoners fetched several sacks from the prosecutor's house, which he and B. filled with barley. The two prisoners then sent B. home before the usual time. At twelve o'clock on the night of the same day, the carter went into the stable with a lantern, and shortly afterwards the prisoners entered the stable. In a few minutes after this the prosecutor saw the carter in the loft above with a lantern, and found the prisoners concealed under straw in the loft, and then in a dust-bin in a stable beneath he found three sacks full of barley mixed with canary seed, which he swore was of the same kind which he had mixed. It was no part of the duty of the prisoners to place the barley in sacks or to put the sacks of barley into the dust-bin. The jury found both the prisoners guilty:—Held, that the evidence was sufficient to support the conviction. *Reg. v. Samways*, Dears. C. C. 371.

1. Possession of Owner, what Sufficient.

Possession obtained by Fraud.]—A. owed 4*l.* 1*1s.* 1*d.* to the prosecutor; and the latter having demanded payment, the prisoner said he would settle with him on behalf of A. He took out of his pocket a piece of blank paper, stamped with a sixpenny stamp, and put it upon the table, and then took out some silver in his hand. The prosecutor wrote a receipt for the sum mentioned on the stamped paper, and the prisoner took it up and went out of the room. On being asked for the money, he said, "It is all right," but never paid it:—Held, that this was not a case of larceny, the prosecutor never having had such a possession of the stamped paper as would enable him to maintain trespass. *Reg. v. Smith*, 2 Den. C. C. 449; 5 Cox, C. C. 533; 21 L. J., M. C. 111; 16 Jur. 414; S. P., *Reg. v. Frompton*, 2 C. & K. 47.

Where in consequence of an advertisement, A. applied to B. to raise money for him, and B. promised to procure 5,000*l.* and produced ten blank 6*s.* stamps, across which A. wrote an acceptance, and B. took them up without saying anything, and afterwards filled up the stamps as bills for 500*l.* each and put them in circulation:—Held, that as the prosecutor never had any possession of the papers so as to maintain trespass for them, there was no taking of them sufficient to constitute larceny. *Rea v. Hart*, 6 C. & P. 106.

Possession obtained by Threats.]—To obtain from a person his note of hand by threatening with a knife held to his throat to take away his life, was not a felonious stealing of the note within 2 Geo. 2, c. 25, s. 3. for it never was of value to, or in the peaceable possession of, such person. *Rea v. Phipoe*, 2 Leach, C. C. 673; 2 East, P. C. 599. *See now* 24 & 25 Vict. c. 96, s. 48.

If a person with menaces demanded a sum of money of another, and that other did not give it to him because he had it not with him, this was a felony within 7 & 8 Geo. 4, c. 29, s. 6; but if the person demanding the money knew that the money was not then in the possession of the party, and only intended to obtain an order for the payment of it, it was otherwise. *Rea v. Edwards*, 6 C. & P. 515. *See now* 24 & 25 Vict. c. 96, s. 48.

Special Property in Goods determined by Unlawful Acts.]—The prisoner was employed by a tailor to sell clothes for him about a particular county; the price of each article was fixed, and the clothes were entrusted to the prisoner on the arrangement that he was to sell them at the price fixed, he receiving 3*s.* in the pound on the amount received for them, and being bound to bring back the remainder of the clothes which were unsold. The prisoner received from the prosecutor a parcel of clothes on these terms, but, instead of selling them, he fraudulently pawned a portion of them for his own benefit, and afterwards fraudulently misappropriated the residue to his own use:—Held, that the original bailment of the goods to the prosecutor was determined by the unlawful act of pawning part of them, and that the subsequent fraudulent misappropriation of the remainder amounted to larceny. *Reg. v. Poyser*, 2 Den. C. C. 233; T. & M. 559; 5 Cox, C. C. 241; 20 L. J., M. C. 191; 15 Jur. 386.

What sufficient Reduction into Possession.]—The prisoner was employed to trap wild rabbits, and it was his duty to take them when trapped to the head keeper. Contrary to his duty he trapped from time to time rabbits, and took them to another part of the land, and placed them in a bag, which another keeper observing, went and took some of the rabbits out of the bag during the prisoner's absence and nicked them, and put them into the bag. His reason for nicking them was that he might know them again. The prisoner afterwards took away the bag and the rabbits with the intention of appropriating them to his own use:—Held, that the act of the keeper in nicking the rabbits was no reduction of them into the possession of the master, so as to make the prisoner guilty of stealing them. *Reg. v. Petch*, 14 Cox, C. C. 17; 38 L. T. 788.

Possession of Master by means of Servant.]—The prosecutor's horse had been impounded. The prisoner, pretending that he had been sent by the prosecutor, paid the pound-keeper's demand, received the horse, and made off with it. He was indicted for larceny. The indictment had two counts, one laying the property in the prosecutor, and the other in the pound-keeper:—Held, that the pound-keeper was a servant of the owner, and, therefore, that the offence was larceny. *Reg. v. Simpson*, 2 Cox, C. C. 235.

Where a person gave his servant a 5*l.* note to get changed, and he got the note changed, and made off with the change:—Held, to be no larceny, but an embezzlement. *Reg. v. Sullens*, Car. C. L. 319; 1 M. C. C. 129.

The prisoner was sent with his master's cart for some coals. The coals were delivered to the prisoner and deposited in the cart, their price being entered to the master's account. On the road home the prisoner disposed of a portion of the coals:—Held, that this was larceny of the coals and not embezzlement, the prisoner having determined his exclusive possession of the coals when they were deposited in the cart, and the possession from that time being in the master. *Reg. v. Reid*, Dears. C. C. 257; 2 C. L. R. 607; 23 L. J., M. C. 25; 18 Jur. 67.

The prisoner having been entrusted with certain goods for sale, and ten pounds in silver, to give change, by his master, absconded:—Held, that he could not be convicted of embezzlement, having received the goods from the master himself and not from another for and on account of his master: but that he might be convicted of larceny. *Reg. v. Hawkins*, 1 Den. C. C. 584; T. & M. 328; 14 Jur. 513.

A. had agreed to buy straw of B., and sent his servant C. to fetch it; C. did so, and put down the whole quantity of straw at the door of A.'s stable, which was in a court-yard of A., and then went to A. and asked him to send some one with the key of the hay-loft, which was over the stable, which A. did, and C. put part of the straw into the hay-loft, and carried the rest away to a public-house, and sold it:—Held, that this carrying away of the straw by C., if done with a felonious intent, was a larceny, and not an embezzlement, as the delivery of the straw to A. was complete when it was put down at the stable-door. *Reg. v. Hayward*, 1 C. & K. 518.

The prisoner was employed to conduct an office in connexion with a branch bank. His salary included his services, and the providing an office, which was in his own house, where he

carried on another business. The office was fitted up at the expense of the bank, and in it there was an iron safe, the property of the bank, into which it was his duty, when the night came, to put any money received during the day, which had not been required. The manager of the branch bank kept a duplicate key of the safe. It was the prisoner's duty to receive money from customers, to be put to their accounts with the branch bank, and to pay cheques. The prisoner was indicted for larceny as a clerk, and the jury found him guilty of having stolen some money received from customers, which before such stealing had been placed in the safe:—Held, that there was evidence to go to the jury of larceny. *Reg. v. Wright*, Dears. & B. C. C. 431; 7 Cox, C. C. 413; 27 L. J., M. C. 65; 4 Jur., N. S. 313.

See also cases ante, col. 316.

2. WHAT ARE THE SUBJECT OF LARCENY.

a. Generally.

Things Savouring of the Realty.]—Before 7 & 8 Geo. 4, c. 29, stealing rolls of parchment was a larceny, though such rolls were the records of a court of justice unless they concerned the realty. *Reg. v. Walker*, 1 M. C. C. 155.

But it was not so if they concerned the realty. *Reg. v. Westbeer*, 2 Str. 1133.

A commission to settle the boundaries of a manor is an instrument concerning the realty, and not the subject of larceny at common law. *Reg. v. Westbeer*, 1 Leach, C. C. 13.

—**Seaweed.]**—Drifted and ungathered seaweed, cast on the shore, between high and low water mark, of him who has the exclusive ownership of the shore, is not the subject of larceny. *Reg. v. Clinton*, 4 Ir. R., C. L. 6.

—**Pigs Buried.]**—Three pigs bitten by a mad dog were shot and buried on the owner's land three feet below the surface of the soil. There was no intention of digging them up again or of making any use of them, but the same evening the prisoners dug them up, carried them away, and afterwards sold them for 9*l.* 3*s.* 9*d.* The jury found that there was no abandonment of the property of the pigs by the owner, and convicted the prisoners of larceny:—Held, that larceny would lie notwithstanding the dead pigs were buried in the ground three feet below the surface. *Reg. v. Edwards*, 13 Cox, C. C. 384; 36 L. T. 30.

Animals Ferae Naturae—Rabbits.]—Poachers, of whom the prisoner was one, wrongfully killed a number of rabbits upon land belonging to the crown. They placed the rabbits in a ditch upon the land, some of the rabbits in bags, and some strapped together. They had no intention to abandon the wrongful possession of the rabbits which they had acquired by taking them, but put them in the ditch as a place of deposit till they could conveniently remove them. About three hours afterwards the prisoner came back, and began to remove the rabbits:—Held, that the taking of the rabbits and the removal of them was one continuous act, and that the removal was therefore not larceny. *Reg. v. Townley*, 6 L. R., C. C. 315; 40 L. J., M. C. 144; 24 L. T. 517; 19 W. R. 725; 12 Cox, C. C. 59.

— **Live Partridges.**—A prisoner was indicted for stealing one dead partridge, and the proof was that the partridge was wounded, but was picked up or caught by the prisoner while it was alive but in a dying state:—Held, that the indictment was not proved. *Reg. v. Roe*, 11 Cox, C. C. 554; 22 L. T. 414.

— **But if Confined, it is Otherwise.**—Parttridges about three weeks old and able to fly a little, which had been hatched and reared by a common hen, placed under a hen-coop, and after the removal of the coop remained about the place with the hen as her brood, sleeping under her wings at night, may be the subject of larceny. *Reg. v. Shickle*, 1 L. R., C. C. 158; 38 L. J., M. C. 21; 19 L. T. 327; 17 W. R. 144; 11 Cox, C. C. 189.

Pheasants that have been reared under hens, and have never become wild, may be the subject of larceny. *Reg. v. Head*, 1 F. & F. 350.

So young pheasants hatched by a hen, and under the care of the hen, in a coop, in a field at a distance from a dwelling-house, are the subject of larceny. *Reg. v. Cory*, 10 Cox, C. C. 23. *N. P.*, *Reg. v. Garnham*, 1 Cox, C. C. 451; 2 F. & F. 347.

Pigeons kept in an ordinary dovecote, having liberty of ingress and egress at all times by means of holes at the top, may be the subjects of larceny. *Reg. v. Cheafor*, 2 Den. C. C. 361; 5 Cox, C. C. 367; 21 L. J., M. C. 43.

If pigeons are so far tame that they come home every night to roost in wooden boxes, hung on the outside of the house of their owner, and a party comes in the night and steals them out of these boxes, this is a larceny. *Ree v. Brooks*, 4 C. & P. 131.

Products of Domestic Animals.—Pulling wool from the bodies of live sheep and lambs, *animus furandi*, is larceny. *Ree v. Martin*, 1 Leach, C. C. 171; 2 East, P. C. 618.

So it is larceny to take the milk from a cow. *Ib.*

Domestic Animals not Used for Food.—Dogs are not the subject-matter of larceny at common law. *Reg. v. Robinson*, Bell, C. C. 34; 28 L. J., M. C. 58; 5 Jur., N. S. 203.

Ferrets, though tame and saleable, cannot be the subject of larceny. *Ree v. Searing*, R. & R. C. C. 351.

Choses in Action or Goods and Chattels.—Mortgage deeds, being substituted securities for the payment of money, are choses in action, and not goods and chattels. Where, therefore, a prisoner was indicted for a burglary, in breaking into a house at night, with intent to steal the goods and chattels therein, and the jury found that he broke into the house with intent to steal mortgage deeds only, the conviction was quashed. *Reg. v. Powell*, 2 Den. C. C. 403; 5 Cox, C. C. 326; 21 L. J., M. C. 78; 16 Jur. 177.

An agreement, although unstamped, is a chose in action, and therefore not the subject of larceny. *Reg. v. Watts*, Dears. C. C. 326; 6 Cox, C. C. 304; 2 C. L. R. 604; 23 L. J., M. C. 56; 18 Jur. 192.

But by 17 & 18 Vict. c. 83, s. 27, every instrument liable to stamp duty shall be admitted in evidence in any criminal proceeding, although it may not have the stamp required by law impressed thereon or affixed thereto.

Stealing a pawnbroker's duplicate is larceny. *Reg. v. Morrison*, Bell, C. C. 158; 8 Cox, C. C. 194; 28 L. J., M. C. 210; 33 L. T., O. S. 220; 7 W. R. 554.

The fraudulent taking of a railway ticket for the purpose of using it to travel, and so defrauding the railway company, is larceny, although the ticket would, if used, be returned to the company at the end of the journey. *Reg. v. Beecham*, 6 Cox, C. C. 181.

Gas.—The prisoner had contracted with a gas company for a supply of gas. The quantity consumed was to be measured by a meter rented by the prisoner of the company, and was to be paid for according to such measurement. The gas was conveyed from the company's main through an entrance pipe (the property of the prisoner) to the meter, and from thence, by another pipe, called the exit pipe, to the burners. The prisoner, by inserting a connecting pipe into the entrance and exit pipes, diverted the gas from the meter, and thereby avoided paying for the full quantity of gas consumed:—Held, that this was larceny of the gas; that the property and possession of the gas were in the company; and that it was immaterial whether the service pipe was the property of the prisoner or the company. *Reg. v. White*, 3 C. & K. 363; Dears. C. C. 203; 6 Cox, C. C. 213; 22 L. J., M. C. 123; 17 Jur. 536.

Water stored in Pipes.—Water supplied by a water company to a consumer, and standing in his pipes, may be the subject of a larceny at common law. *Ferens v. O'Brien*, 11 Q. B. D. 21; 52 L. J., M. C. 70; 31 W. R. 643; 47 J. P. 472.

b. In particular Cases.

i. Documents, Bills, Securities, &c.

Documents of Title to Goods.—By 24 & 25 Vict. c. 96, relating to larceny and other similar offences, s. 1, in the interpretation of this act the term "document of title to goods" shall include any bill of lading, India warrant, dock warrant, warehouse keeper's certificate, warrant or order for the delivery or transfer of any goods or valuable thing, bought and sold note, or any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by indorsement or by delivery, the possessor of such document to transfer or receive any goods thereby represented or therein mentioned or referred to.

Document of Title to Lands.—The term "document of title to lands" shall include any deed, map, paper, or parchment, written or printed, or partly written and partly printed, being or containing evidence of the title, or any part of the title to any real estate, or to any interest in or out of any real estate.

Property.—This term shall include every description of real and personal property, money, debts, and legacies, and all deeds and instruments relating to or evidencing the title or right to any property, or giving a right to recover or receive any money or goods, and shall also include, not only such property as shall have been originally in the possession or under the control

of any party, but also any property into or for which the same may have been converted or exchanged, and any thing acquired by such conversion or exchange, whether immediately or otherwise.

Valuable Securities.]—The term “valuable security” shall include any order, Exchequer acquittance, or other security whatsoever, entitling or evidencing the title of any person or body corporate to any share or interest in any public stock or fund, whether of the United Kingdom, or of Great Britain or of Ireland, or of any foreign state, or in any fund of any body corporate, company, or society, whether within the United Kingdom or in any foreign state or country, or to any deposit in any bank, and shall also include any debenture, deed, bond, bill, note, warrant, order, or other security whatsoever for money or for payment of money, whether of the United Kingdom, or of Great Britain, or of Ireland, or of any foreign state, and any document of title to lands or goods as heretofore defined. (Former provision, 7 & 8 Geo. 4, c. 29, s. 5.)

By 24 & 25 Vict. c. 96, s. 27, whosoever shall steal, or shall for any fraudulent purpose destroy, cancel, or obliterate the whole or any part of any valuable security, other than a document of title to lands, shall be guilty of felony, of the same nature and in the same degree, and punishable in the same manner as if he had stolen any chattel of like value with the share, interest, or deposit to which the security so stolen may relate, or with the money due on the security so stolen, or secured thereby and remaining unsatisfied, or with the value of the goods or other valuable thing represented, mentioned, or referred to in or by the security. (Former provision, 7 & 8 Geo. 4, c. 29, s. 5.)

Mortgage Deeds.]—A mortgage deed, and title deeds accompanying it, constituted a security for money within the latter statute. *Reg. v. Williams*, 6 Cox, C. C. 49.

Indictment.]—An indictment charging in one count the larceny of “three deeds being a security for money, to wit, for 20*l.*, of and belonging to H. W.,” and in another count the larceny of “three deeds, being a security for the payment of money, to wit, for 20*l.*, of and belonging to H. W.,” is supported by proof of the larceny of deeds of lease and release from A. to B. of real estate, and of a mortgage by demise of the same property from B. to C., and held by the prosecutor as executor of C. *Id.*

An indictment under 24 & 25 Vict. c. 96, s. 27, for stealing a valuable security, must particularise the kind of valuable security stolen; and any material variance between the description in the indictment and the evidence, if not amended, will be fatal. *Reg. v. Lowrie*, 1 L. R., C. C. 61; 36 L. J., M. C. 24; 15 L. T. 632; 15 W. R. 360.

Bills, Notes, and other Securities.]—Stealing re-issuable notes after they have been paid, and before they have been re-issued, did not subject the party to an indictment on 2 Geo. 2, c. 25, for stealing notes; but he might be indicted for stealing paper with valuable stamps upon it. *Reg. v. Clark*, R. & R. C. C. 181; 2 Leach, C. C. 1036.

A person might be convicted, under 7 & 8 Geo. 4, c. 29, s. 5, if he stole scrip certificates of a foreign railway company, as the statute extended to valuable securities for the shares in the funds of a foreign as well as of a British company. *Reg. v. Smith*, Dears. C. C. 561; 7 Cox, C. C. 93; 25 L. J., M. C. 31; 1 Jur., N. S. 1212.

Country bankers' notes, which had been paid by the bankers in London at whose house they were made payable, and by them sent down to the country bankers to be re-issued, on the way there were stolen, and the prisoner was indicted for receiving them. The indictment in some counts charged the notes to be valuable securities, and in others, as pieces of paper of the goods and chattels of the country bankers. The prisoner was convicted and the conviction held right. Some of the judges doubted whether these notes were to be considered as valuable securities, but, if not, they all thought they were goods and chattels. *Reg. v. Vyze*, 1 M. C. C. 218.

Exchequer bills, although signed by a person not authorized to do so, were securities and effects within 15 Geo. 2, c. 13, s. 12. *Reg. v. Aslett*, 1 N. R. 1; 2 Leach, C. C. 958; R. & R. C. C. 67.

The halves of country bank notes, sent in a letter, are goods and chattels, and a person who steals them is indictable for larceny. *Reg. v. Mead*, 4 C. & P. 535.

A., in consequence of seeing an advertisement, applied to B. to raise money for him. B. said he would procure him 5,000*l.*, and produced from his pocket-book ten blank 6*s.* bill stamps, across each of which A. wrote, “Accepted, payable at Messrs. P. & Co., 189, F. Street, London,” and signed his name. B., who was present, took up the stamps, and nothing was said as to what was to be done with them. Afterwards bills of exchange for 500*l.* each were drawn on these stamps, and B. put them into circulation.—Held, that these stamps, with the acceptances thus written upon them, were neither bills of exchange, orders for the payment of money, nor securities for money. *Reg. v. Hart*, 6 C. & P. 106.

Cheque.]—A cheque is the subject of larceny if obtained animo fraudi. *Commonwealth v. Yerkes*, 12 Cox, C. C. 208.

Even if Void.]—A. charged in one count with stealing a cheque for 15*l.* 9*s.* 7*d.*, and in another count with stealing a piece of paper value 1*d.*—Held, that, supposing the cheque to have been a void cheque (as being contrary to 55 Geo. 3, c. 184), it would still sustain the charge laid in the second count. *Reg. v. Perry*, 1 Den. C. C. 69; 1 C. & K. 725.

Deeds relating to Real Property.]—By 24 & 25 Vict. c. 96, s. 28, whosoever shall steal, or shall for any fraudulent purpose destroy, cancel, obliterate, or conceal the whole or any part of any document of title to lands shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for the term of five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Wills or Codicils.—By s. 29, *whosoever shall either during the life of the testator or after his death, steal, or for any fraudulent purpose destroy, cancel, obliterate, or conceal, the whole or any part of any will, codicil, or other testamentary instrument, whether the same shall relate to real or personal estate, or to both, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labour and with or without solitary confinement.*

And it shall not in any indictment for such offence be necessary to allege that such will, codicil, or other instrument is the property of any person. (Former provision, 7 & 8 Geo. 4, c. 29, s. 23.)

Fraudulent Purpose.—If a defendant concealed a will, and the money which ought, by the will, to have gone to A. and B., and with that money paid the debts of the husband of the next of kin, to whom he was a creditor, this was a fraudulent purpose, within 7 & 8 Geo. 4, c. 29, s. 23. *Reg. v. Morris*, 9 C. & P. 89.

What Taking is sufficient.—On an indictment on 7 & 8 Geo. 4, c. 29, s. 23, for stealing writings relating to real estate, the jury must be satisfied that the defendant took them under such circumstances as would have amounted to larceny, if the writings had been the subject of larceny. *Re v. John*, 7 C. & P. 324.

Records or Legal Documents.—By s. 30, *whosoever shall steal, or shall for any fraudulent purpose take from its place of deposit for the time being, or from any person having the lawful custody thereof, or shall unlawfully and maliciously cancel, obliterate, injure, or destroy the whole or any part of any record, writ, return, panel, process, interrogatory, deposition, affidavit, rule, order or warrant of attorney, or of any original document whatsoever or of belonging to any court of record, or relating to any matter, civil or criminal, begun, depending, or terminated in any such court, or of any bill, petition, answer, interrogatory, deposition, affidavit, order, or decree, or of any original document whatsoever, or of belonging to any court of equity, or relating to any cause or matter begun, depending, or terminated in any such court, or of any original document in anywise relating to the business of any office or employment under her Majesty, and being or remaining in any office appertaining to any court of justice, or in any of her Majesty's castles, palaces, or houses, or in any government or public office, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement; and it shall not in any indictment for such offence be necessary to allege that the article in respect of which the offence is committed is the property of any person. (Former provision, 7 & 8 Geo. 4, c. 29, s. 21.)*

Taking for Fraudulent Purpose.—A judgment debtor's goods having been seized under warrants

of execution of a county court, and being in the possession of the bailiff, the debtor, with intent to deprive the bailiff, as he supposed, of his authority, and so defeat the execution, forcibly took the warrants from him:—Held, that he was not guilty of larceny, but that he was guilty of taking the warrants for a fraudulent purpose within 24 & 25 Vict. c. 96, s. 30. *Reg. v. Bailey*, 1 L. R., C. C. 347; 41 L. J., M. C. 61; 25 L. T. 882; 20 W. R. 301; 12 Cox, C. C. 129.

ii. *Horses, Cattle, &c.*

Statute.—By 24 & 25 Vict. c. 96, s. 10, *whosoever shall steal any horse, mare, gelding, colt or filly, or any bull, cow, ox, heifer or calf, or any ram, ewe, sheep or lamb, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (Previous provision, 7 & 8 Geo. 4, c. 29, s. 25.)*

Bullock-stealing.—The phrase bullock-stealing, in 7 Geo. 4, c. 64, s. 28, relating to the allowance of rewards in certain cases for the discovery of offenders, includes all cases of cattle-stealing of that particular description, e. g. ox, cow, heifer, &c. *Re v. Gillbrass*, 7 C. & P. 445.

Stealing Lambs—What is.—An indictment for stealing lambs is sustained by proof that the carcasses were found in the owner's ground, and only the skins taken away. *Re v. Rawlins*, 2 East, P. C. 617.

Carcasses of.]—See post, col. 344.

iii. *Deer.*

Stealing Deer in Uninclosed Forests.—By 24 & 25 Vict. c. 96, s. 12, *whosoever shall unlawfully and wilfully course, hunt, snare or carry away, or kill or wound, or attempt to kill or wound, any deer kept or being in the uninclosed part of any forest, chase or park, shall for every such offence, on conviction thereof before a justice of the peace, forfeit and pay such sum, not exceeding 50l., as to the justice shall seem meet; and whosoever having been previously convicted of any offence relating to deer, for which a pecuniary penalty shall have been imposed by this or by any former act of Parliament, shall afterwards commit any of the offences hereinbefore enumerated, whether such second offence be of the same description as the first or not, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping. (Former provision, 7 & 8 Geo. 4, c. 29, s. 26.)*

In Inclosed Grounds.—By s. 13, *whosoever shall unlawfully and wilfully course, hunt, snare or carry away, or kill or wound, or attempt to kill or wound, any deer kept or being in the inclosed part of any forest, chase or park,*

or in any inclosed land where deer shall be usually kept, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping. (Former provision, 7 & 8 Geo. 4, c. 29, s. 26.)

Unlawful Possession of Venison.]—As to what is a suspicious possession of venison, see s. 14.

Setting Engines for Taking or Killing.]—By s. 15, whosoever shall unlawfully and wilfully set or use any snare or engine whatsoever, for the purpose of taking or killing deer, in any part of any forest, chase or purlieu, whether such part be inclosed or not, or in any fence or bank dividing the same from any land adjoining, or in any inclosed land where deer shall be usually kept, or shall unlawfully and wilfully destroy any part of the fence of any land where any deer shall be then kept, shall on conviction thereof before a justice of the peace, forfeit and pay such sum of money, not exceeding 20*l.*, as to the justice shall seem meet. (Former provision, 7 & 8 Geo. 4, c. 29, s. 28.)

What is Deer.]—The term deer includes all kinds of deer, all ages and both sexes. *Reg. v. Strange*, 1 Cox, C. C. 58.

Inclosures.]—An inclosure in the Forest of Dean, made under a statute, for the protection of timber, and surrounded by a ditch and a bank, which were sufficient to prevent cattle from getting into it, but over which the deer could pass in or out at their free will, was an inclosed part of a forest within 7 & 8 Geo. 4, c. 29, s. 26. *Reg. v. Money*, 2 Russ. C. & M. 371.

The words "wherein deer shall be usually kept" refer to inclosed land only. *Ib.*

Convictions.]—On an indictment under 7 & 8 Geo. 4, c. 29, s. 26, for killing a deer after a previous summary conviction, a conviction by two justices of the previous offence was put in:—Held, that such a conviction was good. *Reg. v. Weale*, 5 C. & P. 135.

Upon an indictment for a second offence against 42 Geo. 3, c. 107, by killing deer, objections might have been taken to the conviction for the first offence, that it was not in the proper county, and that it was not correctly stated in the indictment for the second offence. *Reg. v. Allen*, R. & R. C. C. 513.

A commitment under 7 & 8 Geo. 4, c. 29, s. 26, reciting a conviction that the defendant "did unlawfully kill and carry away one fallow deer, the property of her Majesty Queen Victoria, against the form of the statute," was bad for omitting to state that the deer was in the uninclused part of some forest, chase or purlieu. *Reg. v. King*, 1 D. & L. 721; 13 L. J., M. C. 43; 8 Jur. 271.

Deer Keepers.]—By 24 & 25 Vict. c. 96, s. 16, if any person shall enter into any forest, chase or purlieu, whether inclosed or not, or into any inclosed land where deer shall be usually kept, with intent unlawfully to hunt, course, wound, kill, snare or carry away any deer, every person intrusted with the care of such deer, and any of

his assistants, whether in his presence or not, may demand from every such offender any gun, firearms, snare or engine in his possession, and any dog there brought for hunting, coursing or killing deer, and in case such offender shall not immediately deliver up the same, may seize and take the same from him in any of those respective places, or, upon pursuit made, in any other place to which he may have escaped therefrom, for the use of the owner of the deer; and if any such offender shall unlawfully beat or wound any person intrusted with the care of the deer, or any of his assistants, in the execution of any of the powers given by this act, every such offender shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping. (Former enactment, 7 & 8 Geo. 4, c. 29, s. 29.)

The 16 Geo. 3, c. 30, s. 9, authorized the seizing the guns of persons carrying them into grounds where deer are usually kept, with intent to destroy them, and made the beating or wounding the keepers, in the due execution of their offices, felony:—Held, that an assistant-keeper had no right to seize the person of one so armed in order to get his gun, without having first demanded his gun; and, consequently, if such person beat the keeper it was not within the statute, the keeper not being in the due execution of his office. *Rees v. Amey*, R. & R. C. C. 500.

Pulling a deer-keeper to the ground and holding him there while another person escapes, is not a beating of the deer-keeper within 7 & 8 Geo. 4, c. 29, s. 29. *Reg. v. Hale*, 2 C. & K. 326.

A mere battery is not sufficient to come within this enactment. *Ib.*

There must be a beating in the popular sense of the word. *Ib.*

iv. Doves or Pigeons.

Statute.]—By 24 & 25 Vict. c. 96, s. 23, whosoever shall unlawfully and wilfully kill, wound or take any house dove or pigeon under such circumstances as shall not amount to larceny at common law, shall, on conviction before a justice of the peace, forfeit and pay, over and above the value of the bird, any sum not exceeding 2*l.* (Former provision, 7 & 8 Geo. 4, c. 29, s. 33.)

This enactment does not apply where the killing, though unlawful, is done by the party for the protection of his own property, and under the bona fide belief that he is acting in the exercise of a legal right. *Taylor v. Newman*, 4 B. & S. 69; 9 Cox, C. C. 314; 32 L. J., M. C. 186; 8 L. T. 424; 11 W. R. 752.

v. Fish.

Statute.]—By 24 & 25 Vict. c. 96, s. 24, whosoever shall unlawfully and wilfully take or destroy any fish in any water which shall run through or be in any land adjoining or belonging to the dwelling-house of any person being the owner of such water, or having a right of fishery therein, shall be guilty of a misdemeanor;

And whosoever shall unlawfully and wilfully take or destroy, or attempt to take or destroy, any fish in any water not being such as hereinbefore mentioned, but which shall be private

property, or in which there shall be any private right of fishery, shall, on conviction thereof before a justice of the peace, forfeit and pay, over and above the value of the fish taken or destroyed (if any), such sum of money, not exceeding 5*l.*, as to the justice shall seem meet; provided, that nothing hereinbefore contained shall extend to any person angling between the beginning of the last hour before sunrise and the expiration of the first hour after sunset; but whosoever shall by angling between the beginning of the last hour before sunrise and the expiration of the first hour after sunset unlawfully and wilfully take or destroy, or attempt to take or destroy, any fish in any such water as first mentioned, shall, on conviction before a justice of the peace, forfeit and pay any sum not exceeding 5*l.*, and if in any such water as last mentioned he shall, on the like conviction, forfeit and pay any sum, not exceeding 2*l.*, as to the justice shall seem meet; and if the boundary of any parish, township or vill shall happen to be in or by the side of any such water as is in this section before mentioned, it shall be sufficient to prove that the offence was committed either in the parish, township, or vill named in the indictment or information, or in any parish, township, or vill adjoining thereto. (Former provision, 7 & 8 Geo. 4, c. 29, s. 36.)

By s. 25, if any person shall at any time be found fishing against the provisions of this act, the owner of the ground, water, or fishery where such offender shall be so found, his servant, or any person authorized by him, may demand from such offender any rod, line, hook, net, or other implement for taking or destroying fish which shall then be in his possession; and in case such offender shall not immediately deliver up the same, may seize and take the same from him for the use of such owner; provided, that any person angling against the provisions of this act, between the beginning of the last hour before sunrise and the expiration of the first hour after sunset, from whom any implement used by anglers shall be taken, or by whom the same shall be so delivered up, shall by the taking or delivering thereof be exempted from the payment of any damages or penalty for such angling. (Similar to 7 & 8 Geo. 4, c. 29, s. 35.)

By s. 26, whosoever shall steal any oysters or oyster brood from any oyster bed, laying, or fishery, being the property of any other person, and sufficiently marked out or known as such, shall be guilty of felony, and being convicted thereof shall be liable to be punished as in the case of simple larceny;

And whosoever shall unlawfully and wilfully use any dredge, or any net, instrument, or engine whatsoever, within the limits of any oyster bed, laying, or fishery, being the property of any other person, and sufficiently marked out or known as such, for the purpose of taking oysters or oyster brood, although none shall be actually taken, or shall unlawfully and wilfully, with any net, instrument, or engine, drag upon the ground or soil of any such fishery, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding three months, with or without hard labour, and with or without solitary confinement;

And it shall be sufficient in any indictment to describe either by name or otherwise the bed,

laying, or fishery in which any of the said offences shall have been committed, without stating the same to be in any particular parish, township, or vill; provided, that nothing in this section contained shall prevent any person from catching or fishing for any floating fish within the limits of any oyster fishery with any net, instrument, or engine adapted for taking floating fish only.

Indictment.]—Semble, an indictment on 5 Geo. 3, c. 14, s. 1, for stealing fish out of a river running through an inclosed park, need not have stated the ways, means, or devices by which the fish were taken. *Re v. Carradice, R. & R. C. C. 205.*

Place where Fish are Bred, Kept, and Preserved.]—On an indictment on 5 Geo. 3, c. 14, s. 1, for entering an inclosed park, and taking fish bred, kept, and preserved there, in the river Kent, running through the park, it appeared that the park was walled round, except where the river entered and passed out, and that there were fences to keep in the deer, that there was nothing to keep in the fish, that they were not known to breed there, that nothing was done to stock the river, but that persons were never suffered to angle in the park without leave:—Held, that this was not a place where fish were to be considered as “bred, kept, or preserved” within the meaning of the act. *Id.*

Stream in Inclosed Ground.]—A stream of water running by the side of a piece of ground, which is inclosed on every side except that on which it is bounded by the water, was not a stream in inclosed ground, within 5 Geo. 3, c. 14, s. 3, so as to subject a person fishing therein to the penalty inflicted by that act. *Leslie v. Brown, 1 Marsh. 127; 5 Taunt. 440.*

Proof of Offence.]—A defendant formed an oyster-bed in a part of the Menai Straits where persons had been accustomed to dredge for oysters. The plaintiff bought of a dredger a quantity of oysters, when the defendant, having been informed that the oysters were taken from his bed, gave the plaintiff into custody on a charge of having in his possession stolen oysters. The plaintiff having been discharged, brought an action for false imprisonment, when the defendant relied on 7 & 8 Geo. 4, c. 29, s. 36; and, in order to shew that he acted *bonâ fide* and under the belief that the oysters were stolen, he tendered in evidence the record of the conviction of a person who had shortly before been tried for taking oysters from the same bed of the defendant:—Held, that the record, merely as such, was inadmissible. *Thomas v. Russell, 9 Ex. 764; 2 C. L. R. 542; 23 L. J., Ex. 233.*

To try a Right.]—A person who fished in a fishery belonging to another, but to which he had a claim, for the purpose of giving occasion to an action in order to try the right, was not liable to a penalty under 5 Geo. 3, c. 14. *Kinnersley v. Orpe, 2 Dougl. 517.*

Conviction—Form of.]—A conviction under 5 Geo. 3, c. 14, for killing fish in a private river, without the consent of the owner, should state the offence to have been committed in an inclosed ground. *Wicks v. Clutterbuck, 10*

Moore, 63 ; 2 Bing. 483 ; *S. P.*, *Ree v. Sadler*, 2 Chit. 519.

And that it was without the consent of such owner. *Ree v. Daman*, 2 B. & A. 378 ; 1 Chit. 147 ; *S. P.*, *Ree v. Corden*, 2 Burr. 2279.

So, a conviction on the same statute, for fishing without consent of the owner, "in part of a certain stream which runs between B. in the parish of A., in the county of W., and C., in the same parish and county," quashed, because it did not appear that the intermediate course of the stream between the two termini in which the offence was alleged to be committed was in the county of W., and within the jurisdiction of the convicting magistrate. *Ree v. Edwards*, 1 East, 278.

Objection to a conviction for unlawfully taking and killing fish, in that it did not allege that the defendant had not the licence or consent of the owner ; but that it merely alleged that he took and killed the fish unlawfully and against the form of the statute, is insufficient, and therefore it was quashed. *Ree v. Mallinson*, 2 Burr. 679 ; 2 Ld. Ken. 384.

vi. Dogs.

Statute.]—By 24 & 25 Vict. c. 96, s. 18, who-soever shall steal any dog shall, on conviction thereof before two justices of the peace, either be committed to the common gaol or house of correction, there to be imprisoned, or to be imprisoned and kept to hard labour, for any term not exceeding six months, or shall forfeit and pay, over and above the value of the said dog, such sum of money, not exceeding 20*l.*, as to the said justices shall seem meet ; and whosoever, having been convicted of any such offence, either against this or any former act of parliament, shall afterwards steal any dog, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding eighteen months, with or without hard labour. (Former provision, 8 & 9 Vict. c. 47, s. 2.)

By s. 19, whosoever shall unlawfully have in his possession or on his premises any stolen dog, or the skin of any stolen dog, knowing such dog to have been stolen or such skin to be the skin of a stolen dog, shall, on conviction thereof before two justices of the peace, be liable to pay such sum of money, not exceeding 20*l.*, as to such justices shall seem meet ; and whosoever, having been convicted of any such offence, either against this or any former act of Parliament, shall afterwards be guilty of any such offence as in this section before mentioned, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding eighteen months, with or without hard labour. (Former provision, 8 & 9 Vict. c. 47, s. 3.)

By s. 20, whosoever shall corruptly take any money or reward, directly or indirectly, under pretence or upon account of aiding any person to recover any dog which shall have been stolen, or which shall be in the possession of any person not being the owner thereof, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding eighteen months, with or without hard labour. (Former provision, 7 & 8 Vict. c. 47, s. 4.)

vii. Birds and other Animals.

Statute.]—By s. 21, whosoever shall steal any bird, beast, or other animal ordinarily kept in a state of confinement or for any domestic purpose, not being the subject of larceny at common law, or shall wilfully kill any such bird, beast or animal, with intent to steal the same or any part thereof, shall, on conviction thereof before a justice of the peace, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour for any term not exceeding six months, or else shall forfeit and pay, over and above the value of the bird, beast, or other animal, such sum of money not exceeding 20*l.*, as to the justice shall seem meet ; and whosoever, having been convicted of any such offence, either against this or any former act of Parliament, shall afterwards commit any offence in this section before mentioned, and shall be convicted thereof in like manner, shall be committed to the common gaol or house of correction, there to be kept to hard labour for such term not exceeding twelve months as the convicting justice shall think fit.

By s. 22, if any such bird, or any of the plumage thereof, or any dog, or any such beast, or the skin thereof, or any such animal, or any part thereof, shall be found in the possession or on the premises of any person, any justice may restore the same respectively to the owner thereof ; and any person in whose possession or on whose premises such bird or the plumage thereof, or such beast or the skin thereof, or such animal or any part thereof, shall be so found (such person knowing that the bird, beast, or animal has been stolen, or that the plumage is the plumage of a stolen bird, or that the skin is the skin of a stolen beast, or that the part is a part of a stolen animal), shall, on conviction before a justice of the peace, be liable for the first offence to such forfeiture, and for every subsequent offence to such punishment, as any person convicted of stealing any beast or bird is made liable to by the last preceding section.

viii. Carcases or Skins.

Statute.]—By 24 & 25 Vict. c. 96, s. 11, whosoever shall wilfully kill any animal, with intent to steal the carcase, skin or any part of the animal so killed, shall be guilty of felony, and being convicted thereof shall be liable to the same punishment as if he had been convicted of feloniously stealing the same, provided the offence of stealing the animal so killed would have amounted to felony. (Former provision, 7 & 8 Geo. 4, c. 29, s. 25.)

Killing with Intent to Steal.]—Where a man was indicted under 14 Geo. 2, c. 6, for killing sheep with intent to steal the whole carcase, proof of killing with intent to steal part of the carcase was sufficient to support the charge. *Ree v. Williams*, 1 M. C. C. 107.

Cutting off part of a sheep whilst it is alive, with intent to steal such part, will support an indictment for killing with intent to steal part of the carcase, if the cutting off must occasion its death. *Ree v. Clay*, R. & R. C. C. 387.

On the trial of an indictment for killing a ewe with intent to steal the carcase, it appeared that

the prisoner wounded the ewe by cutting her throat, and was then interrupted by the prosecutor, and the ewe died of the wound two days afterwards. It was found by the jury who convicted the prisoner, that he intended to steal the carcass of the ewe; and the judges held the conviction right. *Reg. v. Sutton*, 8 C. & P. 291; 2 Lewin, C. C. 272; 2 M. C. C. 34.

Indictment.]—An indictment charged in the first count, that A. and B. killed a sheep, with intent to steal one of its hind legs; and, in the second count, that C. received nine pounds weight of mutton so stolen as aforesaid; and in the third count, that C. received the mutton "of a certain evil-disposed person," scilicet, &c. :—Held, that, on this form of indictment, all the three prisoners might be properly convicted. *Reg. v. Wheeler*, 7 C. & P. 170.

ix. *Fixtures.*

Statute.]—By 24 & 25 Vict. c. 96, s. 31, *whoever shall steal, or shall rip, cut, sever, or break with intent to steal, any glass or wood work belonging to any building whatsoever, or any lead, iron, copper, brass or other metal, or any utensil or fixture, whether made of metal or other material or of both, respectively fixed in or to any building whatsoever, or anything made of metal fixed in any land being private property, or for a fence to any dwelling-house, garden or arca, or in any square or street, or in any place dedicated to public use or ornament, or in any burial ground, shall be guilty of felony, and, being convicted thereof, shall be liable to be punished as in the case of simple larceny; and in the case of any such thing fixed in any such square, street or place as aforesaid, it shall not be necessary to allege the same to be the property of any person.* (Former provision, 7 & 8 Geo. 4, c. 29, s. 44.)

What is a Building.]—The prisoners were convicted upon an indictment which charged them with stealing lead fixed to a certain wharf. It was proved that the lead stolen formed the gutters of two brick, timber and tile built sheds erected upon the prosecutor's wharf:—Held, that the conviction was good, the lead being fixed to a building within 7 & 8 Geo. 4, c. 29, s. 44. *Reg. v. Rice*, Bell, C. C. 87; 8 Cox, C. C. 119; 28 L. J., M. C. 64; 5 Jur., N. S. 273; 32 L. T., O. S. 323; 7 W. R. 232.

An unfinished building, intended as a cart-shed, which is boarded up on all its sides, and has a door with a lock to it, and the frame of a roof with loose gorse thrown upon it, because it is not yet thatched, is a building within 7 & 8 Geo. 4, c. 29, s. 44. *Reg. v. Worrall*, 7 C. & P. 516.

A church was a building within 4 Geo. 2, c. 32. *Reg. v. Hickman*, 1 Leach, C. C. 318; 2 East, P. C. 593; S. P., *Reg. v. Parker*, 2 East, P. C. 592; 1 Leach, C. C. 320, n.

Metal, &c., affixed to Land.]—The prisoners were convicted upon an indictment framed under 7 & 8 Geo. 4, c. 29, s. 44, of stealing metal fixed in land. It was proved that they had stolen a copper sun-dial fixed upon a wooden post in a churchyard:—Held, that the conviction was right. *Reg. v. Jones*, Dears. & B. C. C. 655; 7 Cox, C. C. 498; 27 L. J., M. C. 171; 4 Jur., N. S. 394.

Stealing iron rails from a tomb in a churchyard, not connected by any building with the church, was not within 4 Geo. 2, c. 32, and 21 Geo. 3, c. 68. *Reg. v. Davis*, 2 East, P. C. 593; 1 Leach, C. C. 496, n.

Semble, that the stealing of brass fixed to tombstones in a churchyard was a felony under 7 & 8 Geo. 4, c. 29, s. 44. *Reg. v. Blich*, 4 C. & P. 377.

Lead images, on pedestals, fixed in the ground near a summer-house, the summer-house being in an inclosed field (but not within the same inclosure as the house), were not within 4 Geo. 2, c. 32. *Reg. v. Richards*, R. & R. C. C. 28.

A larceny may be committed of window sashes which are neither hung nor headed into the frames, but merely fastened by laths nailed across the frames to prevent their shaking out; as they are not fixed to the freehold. *Reg. v. Hedges*, 1 Leach, C. C. 201; 2 East, P. C. 590, n.

By whom Committed—Tenant.]—A person who procured possession of a house under a written agreement between him and the landlord, for a lease of twenty-one years, with a fraudulent intention to steal the fixtures thereto belonging, was, by stealing the lead affixed to the house, guilty of larceny on 4 Geo. 2, c. 32. *Reg. v. Monday*, 2 Leach, C. C. 850; 2 East, P. C. 594.

Indictment.]—An indictment for stealing a copper pipe fixed to the dwelling-house of A. and B., is not supported by proof of stealing a pipe fixed to two rooms of which A. and B. are separate tenants in the same house. *Reg. v. Finch*, 1 M. C. C. 418.

Evidence.]—In support of an indictment for stealing lead fixed to a dwelling-house, proof that the prosecutor received the rent is sufficient prima facie evidence of his ownership. *Reg. v. Brummitt*, L. & C. 9; 8 Cox, C. C. 413; 3 L. T. 679; 9 W. R. 357.

A person, on a count (in the usual form) for stealing lead affixed to a building, cannot be convicted of larceny; and in order to warrant a conviction on such count, the jury must be satisfied that he unfixed the lead from the building, or was present aiding and assisting. *Reg. v. Gooch*, 8 C. & P. 293.

x. *Trees, Shrubs, Vegetables and Fences.*

In Parks, Pleasure Grounds, or Orchards.]—By 24 & 25 Vict. c. 96, s. 32, *whoever shall steal, or shall cut, break, root up, or otherwise destroy or damage with intent to steal, the whole or any part of any tree, sapling, or shrub, or any underwood, respectively growing in any park, pleasure-ground, garden, orchard, or arca, or in any ground adjoining or belonging to any dwelling-house, shall (in case the value of the article or articles stolen, or the amount of the injury done, shall exceed the sum of 1l.) be guilty of felony, and being convicted thereof shall be liable to be punished as in the case of simple larceny;*

And whoever shall steal, or shall cut, break, root up, or otherwise destroy or damage with intent to steal, the whole or any part of any tree, sapling, or shrub, or any underwood, respec-

tively growing elsewhere than in any of the situations in this section before mentioned, shall (in case the value of the article or articles stolen, or the amount of the injury done, shall exceed the sum of 5*l.*) be guilty of felony, and being convicted thereof shall be liable to be punished as in the case of simple larceny. (Similar to former provision, 7 & 8 Geo. 4, c. 29, s. 38.)

Adjoining any Dwelling-house.—In 7 & 8 Geo. 4, c. 29, s. 38, the words "adjoining any dwelling-house" imported actual contact, and therefore ground separated from a house by a narrow walk and paling with a gate in it, was not within their meaning. *Ree v. Hodges*, M. & M. 341.

Garden.—Whether ground is properly described as a garden within that section, is a question for the jury. *Ib.*

Amount of Injury—How Ascertained.—The 24 & 25 Vict. c. 96, s. 32, enacts, that whosoever shall steal or cut, destroy or damage with intent to steal the whole or any part of any tree, &c., shall (in case the value of the article or articles stolen, or the amount of the injury done, shall exceed the sum of 5*l.*) be guilty of felony. In estimating the injury, the amount of the injury done to two or more trees may be added together, provided the trees are damaged at one and the same time, or so nearly at the same time as to form one continuous transaction. *Reg. v. Shepherd*, 1 L. R., C. C. 118; 37 L. J., M. C. 45; 17 L. T. 482; 16 W. R. 373; 11 Cox, C. C. 119.

Elsewhere.—By s. 33, whosoever shall steal, or shall cut, break, root up, or otherwise destroy or damage with intent to steal, the whole or any part of any tree, sapling, or shrub, or any underwood, whosoever the same may be respectively growing, the stealing of such article or articles, or the injury done, being to the amount of 1*s.* at the least, shall, on conviction thereof before a justice of the peace, forfeit and pay, over and above the value of the article or articles stolen, or the amount of the injury done, such sum of money not exceeding 5*l.* as to the justice shall seem meet. (Similar to 7 & 8 Geo. 4, c. 29, s. 39.)

Conviction—Validity of.—A conviction under the 7 & 8 Geo. 4, c. 29, s. 39, for stealing an ash tree, the property of M., ordered the offender "to forfeit and pay, over and above the value of the tree stolen, 5*s.*, and for the value of the tree 1*s.*; and also to pay 1*l.* 4*s.* 6*d.* for costs, to be paid on or before March 19th, and, in default of payment of the sums, to be imprisoned for one month, unless the sums should be sooner paid." It was then ordered, that the 5*s.* should be paid to the overseer, and the 1*s.* to the person aggrieved, and the 1*l.* 4*s.* 6*d.* should be immediately paid to R., the complainant. The information had been laid by R. before one magistrate, who had granted a summons, and the case heard, and the conviction made by another. On an action for false imprisonment being brought against the convicting magistrate:—Held, that the conviction was not invalidated, first, by reason of its not having taken place upon the information of the person aggrieved. Secondly, nor from its having taken place before a magistrate who did not receive the original information. Thirdly, nor by the mode of adjudicating

as to the costs. *Tarry v. Newman*, 2 New Sess. Cas. 449; 15 M. & W. 645; 15 L. J., M. C. 160.

Fences.—By s. 34, whosoever shall steal, or shall cut, break, or throw down with intent to steal, any part of any live or dead fence, or any wooden post, pale, wire, or rail set up or used as a fence, or any stile or gate, or any part thereof respectively, shall, on conviction thereof before a justice of the peace, forfeit and pay, over and above the value of the article or articles so stolen, or the amount of the injury done, such sum of money not exceeding 5*l.* as to the justice shall seem meet. (Former enactment, 7 & 8 Geo. 4, c. 29, s. 40.)

Suspicious Possession.—By s. 35, if the whole or any part of any tree, sapling, or shrub, or any underwood, or any part of any live or dead fence, or any post, pale, wire, rail, stile, or gate, or any part thereof, being of the value of 1*s.* at the least, shall be found in the possession of any person, or on the premises of any person, with his knowledge, and such person being taken or summoned before a justice of the peace, shall not satisfy the justice that he came lawfully by the same, he shall on conviction by the justice forfeit and pay, over and above the value of the article or articles so found, any sum not exceeding 2*l.* (Former provision, 7 & 8 Geo. 4, c. 29, s. 41.)

Vegetables.—By s. 36, whosoever shall steal, or shall destroy or damage with intent to steal, any plant, root, fruit, or vegetable production growing in any garden, orchard, pleasure ground, nursery ground, hothouse, greenhouse, or conservatory, shall, on conviction thereof before a justice of the peace, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding six months, or else shall forfeit and pay, over and above the value of the article or articles so stolen, or the amount of the injury done, such sum of money not exceeding 20*l.* as to the justice shall seem meet. (Former enactment, 7 & 8 Geo. 4, c. 29, s. 42.)

Young Fruit Trees.—The words "plant" and "vegetable production," in that statute, did not apply to young fruit trees. *Ree v. Hodges*, M. & M. 341.

Vegetables not growing in Gardens.—By s. 37, whosoever shall steal, or shall destroy or damage with intent to steal, any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture, and growing in any land, open or inclosed, not being a garden, orchard, pleasure ground, or nursery ground, shall, on conviction thereof before a justice of the peace, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding one month, or else shall forfeit and pay over and above the value of the article or articles so stolen, or the amount of the injury done, such sum of money not exceeding 20*s.* as to the justice shall seem meet, and in default of payment thereof, together with the costs (if ordered), shall be committed for any term not exceeding one month, unless payment be

sooner made. (Former provision, 7 & 8 Geo. 4, c. 29, s. 43.)

— **Clover.**—Clover was a plant used for the food of beasts within this enactment. *Reg. v. Brumby*, 3 C. & K. 315.

3. PERSONS WHO MAY COMMIT OFFENCE.

a. Clerks or Servants.

Statute.—By 24 & 25 Vict. c. 96, s. 67, *whosoever, being a clerk or servant, or being employed for the purpose or in the capacity of a clerk or servant, shall steal any chattel, money, or valuable security belonging to or in the possession or power of his master or employer, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.* (Former provision, 7 & 8 Geo. 4, c. 29, s. 46.)

Who are Clerks or Servants.—On the trial of an indictment for larceny as servant, it appeared that the prisoner lived in the house of the prosecutor, and acted as nurse to his sick daughter, the prisoner having board and lodging and occasional presents for her services, but no wages. While the prisoner was so residing, the prosecutor's wife gave the prisoner money to pay a coal bill, which money the prisoner kept, and brought back a forged receipt to the coal bill:—Held, that the prisoner was not the servant of the prosecutor, but that this was a larceny of the money. *Reg. v. Smith*, 1 C. & K. 428.

A person employed as a distraining broker, if engaged in the service of the prosecutor only, and paid a salary by him, is a servant within 24 & 25 Vict. c. 96, s. 67. *Reg. v. Flanagan*, 10 Cox, C. C. 561.

A member of two unenrolled benefit clubs, paid as secretary, and intrusted with the funds to deposit in the bank in the joint names of himself and the treasurer, dishonestly appropriating to himself the sums intrusted to him, cannot be found guilty of larceny as a servant, or of embezzlement, or of larceny as a bailor. *Reg. v. Marsh*, 3 F. & F. 523.

The driver of a glass-coach hired for the day is not the servant of the party hiring it, so as to bring him within 7 & 8 Geo. 4, c. 29, s. 46. *Re v. Haydon*, 7 C. & P. 445.

— **Question for Jury.**—The prisoner lived with the prosecutor as his wife, and was authorized by him to draw and sign cheques and bills in his name, he being blind and unable to do this himself. He entrusted her with a large sum of money to pay into the bank, which she did not do, but appropriated it to her own use:—Held, that the question, whether she was a servant to the prosecutor, was one for the jury. *Reg. v. Warren*, 10 Cox, C. C. 359.

b. Tenants or Lodgers.

Statute.—By 24 & 25 Vict. c. 96, s. 74, *whosoever shall steal any chattel or fixture let to be*

used by him or her in or with any house or lodging, whether the contract shall have been entered into by him or her or by her husband, or by any person on behalf of him or her or her husband, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping; and in case the value of such chattel or fixture shall exceed the sum of five pounds, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping;

And in every case of stealing any chattel in this section mentioned it shall be lawful to prefer an indictment in the common form as for larceny, and in every case of stealing any fixture in this section mentioned to prefer an indictment in the same form as if the offender were not a tenant or lodger, and in either case to lay the property in the owner or person letting to hire. (Former provision, 7 & 8 Geo. 4, c. 29, s. 45. By 7 & 8 Geo. 4, c. 27, 3 Will. & M. c. 9, was repealed.)

Of what Goods—Chattel Changed.—The prisoners were tenants and occupiers of a house in which were certain gas-fittings belonging to a public company. It became necessary that a gas-meter should be changed, and the old one was taken down and left in the custody of the prisoners till called for by the company's servant. In the meantime they converted it to their use:—Held, that they could not be convicted of larceny. *Reg. v. Mattheson*, 5 Cox, C. C. 276.

A tenant stealing goods from a ready-furnished house was not guilty of felony, within 3 Will. & M. c. 9, s. 5. *Re v. Palmer*, 2 Leach, C. C. 680; 2 East, P. C. 586.

c. Persons in the Queen's Service, or the Police.

Statute.—By 24 & 25 Vict. c. 96, s. 69, *whosoever being employed in the public service of her Majesty, or being a constable or other person employed in the police of any county, city, borough, district, or place whatsoever, shall steal any chattel, money or valuable security belonging to or in the possession or power of her Majesty, or intrusted to or received or taken into possession by him by virtue of his employment, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.*

Amount taken.—An indictment, framed upon 2 & 3 Will. 4, c. 4, s. 1, alleged that A., being employed in the public service, and intrusted, by virtue of such employment, with the receipt of

money, the property of the Queen, fraudulently applied to his own use 5,000*l.* so received, and feloniously stole the same. It was proved that he was an officer of inland revenue, and received certain taxes; that it was his duty to make returns to inspectors, and that these returns, when rendered, shewed a much larger balance in his hands than he was allowed to retain. At last his accounts were examined, and a statement extracted from them was produced to him, shewing a balance in his hands of 5,214*l.* and a fraction, which he admitted to be correct. He was then asked if he was prepared to hand over that balance, or any part of it, and he said he was not. He was then reminded that there was a balance of 300*l.* against him from the previous Monday, which was a receipt day at T. A. then took out a sum of money less than the 300*l.*, and, on being asked what he had done with the rest, said he had spent it in an unfortunate speculation:—Held, that the evidence in respect of the 300*l.* was sufficient to sustain a conviction. *Reg. v. Moak*, Dears. C. C. 626; 25 L. J., M. C. 66; 2 Jur., N. S. 213.

d. Post-Office Servants and Others.

(7 Will. 4 § 1 Vict. c. 36.)

What amounts to a Stealing.]—Fraudulently obtaining the mail bags by delivery from one in the post-office to the prisoner, is a stealing out of the post-office. *Reg. v. Pearce*, 2 East, P. C. 603.

The horse mail bags, being left by the mail rider after he had taken possession of them for a temporary purpose for two minutes, were stolen during his absence:—Held, within the 52 Geo. 3, c. 143, s. 3. *Reg. v. Robinson*, 2 Stark. 485.

A letter carrier, whose duty it was, in case he was unable to deliver any letter, to bring it to the post-office on his return from delivery, not having delivered a letter containing money, gave no account of it, and being asked why he had not delivered it, produced it unopened, and the coin safe within, from his trousers pocket, stating, untruly, that the house where it ought to have been delivered was closed. Upon an indictment for stealing the letter, the jury found him guilty, and that he detained it with the intention of stealing it:—Held, that so dealing with the letter amounted to larceny. *Reg. v. Poynton*, 9 Cox, C. C. 249; L. & C. 247; 32 L. J., M. C. 29; 8 Jur., N. S. 1218; 7 L. T. 434; 11 W. R. 73.

A person employed in the post-office committed a mistake in the sorting of two letters containing money, and he threw the letters unopened, and the money, down a water-closet, in order to avoid a penalty attached to such mistakes:—Held, that there was a larceny of the letters and money, and also a secreting of the letters. *Reg. v. Wynn*, 2 C. & K. 859; 1 Den. C. C. 365; T. & M. 32; 3 New Sess. Cas. 414; 3 Cox, C. C. 269; 18 L. J., M. C. 51; 13 Jur. 107.

To constitute the offence of stealing a letter from a place for the receipt of letters, under 52 Geo. 3, c. 143, s. 2, it was essential that the letter should be carried out of the shop which was the place for the receipt of letters; and, therefore, if a person took a letter and stole its contents, without taking the letter out of the shop, that was not an offence within that statute. *Reg. v. Pearson*, 4 C. & P. 572.

Servants, who are.]—S. delivered two 5*l.* notes to D., the wife of the postmaster of C., at which post-office money orders were not granted, and asked her to send them by G., the letter-carrier, from C. to W., in order that he might get two 5*l.* money orders for them at the W. post-office. D. gave these instructions to G., and put the notes, by his desire, into his bag. G. afterwards took the notes out of the bag, and pretended, when he got to the W. post-office, that he had lost them. It was found by the jury that G. had no intention to steal the notes when they were given to him by D.:—Held, that this taking of the notes by G. was not a larceny, the notes not being in his possession in the course of his duty as a post-office servant. *Reg. v. Glass*, 2 C. & K. 395; 1 Den. C. C. 215.

S., post-mistress of G., received from A. a letter unsealed, but addressed to B., and with it 1*l.* for a post-office order, 3*d.* for the poundage on the order, 1*d.* for the postage, and 1*d.* for the person who got the order. S. gave the letter, unsealed, and the money, to the prisoner, who was the letter-carrier from G. to L., telling him to get the order at L. and inclose it in the letter, and post the letter at L. The prisoner destroyed the letter, never procured the order, and kept the money:—Held, that he was indictable for stealing, embezzling and destroying a post letter, he being at the time in the employ of the post-office. *Reg. v. Bickerstaff*, 2 C. & K. 761.

If a person, while engaged in gratuitously assisting a post-master, at his request, in sorting the letters, steals one of them, he is liable to the severer penalties imposed by 7 Will. 4 & 1 Vict. c. 36, s. 26, as a person employed under the post-office. *Reg. v. Reason*, 2 C. L. R. 120; 6 Cox, C. C. 227; Dears. C. C. 226; 23 L. J., M. C. 11; 17 Jur. 1014.

A person employed at a receiving house of the general post-office to clean boots, and to assist in tying up the letter bag, was not a servant of the post-office within 52 Geo. 3, c. 143, s. 2. *Reg. v. Pearson*, 4 C. & P. 572.

S. was employed by a post-mistress to carry letters from Dursley to Berkeley, at a weekly salary paid him by the post-mistress, but which was repaid to her by the post-office:—Held, that S. was a person employed by the post-office within 52 Geo. 3, c. 143, s. 2. *Reg. v. Salisbury*, 5 C. & P. 155.

Receiving-Houses.]—A receiving-house was not a post-office within 52 Geo. 3, c. 143, s. 2, but it was a place for the receipt of letters, and the whole shop was to be considered as the place for the receipt of letters, and not the mere letter-box; and therefore if a person took a letter and put it on the shop-counter of the receiving-house or gave it to one of the persons belonging to the shop there, that was a putting the letter into the post. *Reg. v. Pearson*, 4 C. & P. 572.

Post Letters, what are.]—The president of a department in the post-office put a half-sovereign into a letter, on which he wrote a fictitious address, and dropped the letter, with the money in it, into the letter-box of a post-office receiving-house, where the prisoner was employed in the service of the post-office. The prisoner stole the letter and money:—Held, that this was a stealing of a post letter, containing money, and that

this was not the less a post letter within 7 Will. 4 & 1 Vict. c. 36, s. 26, because it had a fictitious address. *Reg. v. Young*, 2 C. & K. 446; 1 Den. C. C. 194.

R., an officer in the post-office in London, intending to try the honesty of G., the post-mistress of Enstone, went to Oxford, and having put marked money into a letter, directed "Thomas Hicks, Radford-lane, Exeter," placed this letter in a bundle of letters in the Oxford post-office, which was to go to the Enstone post-office. This letter going in the bundle of letters to the Enstone post-office, G. took out the marked money, and denied any knowledge of the letter. R. neither knew any person named Thomas Hicks, nor that there was any such place as Radford-lane in Exeter:—Held, that this was not a stealing of a post letter, but that the taking of the money by G. was a larceny. *Reg. v. Gardener*, 1 C. & K. 628. *Overruled by preceding case.*

A post-office being at an inn, a person was sent to put a letter, containing promissory notes, into the post. He took it to the inn, with money to pre-pay the postage; he did not put it into the letter-box, but laid the letter, and the money upon it, upon a table in the passage of the inn, in which passage the letter-box was, and he pointed out the letter to the prisoner, who was a female servant at the inn, who said she would "give it to them." The prisoner, who was not authorized by the inn-keeper, her master, to receive letters for him, stole the letter and its contents:—Held, that this was not a post letter within 7 Will. 4 & 1 Vict. c. 36, ss. 27, 28; and that the stealing of the letter and its contents by the prisoner was not an offence within either of those sections. *Reg. v. Harley*, 1 C. & K. 89.

An inspector secretly put a letter, prepared for the purpose, containing a sovereign, amongst some letters, which a letter-carrier, suspected of dishonesty, was about to sort. The letter-carrier stole the letter and the sovereign:—Held, not rightly convicted of stealing a post letter, such letter not having been put in the post in the ordinary way; but rightly convicted of larceny of the sovereign, laid as the property of the Post-master-General. *Reg. v. Rathbone*, 2 M. C. C. 242; Car. & M. 220.

A. brought a letter, enclosing a 10*l.* note, to a district receiving-house, and desired that it might be registered. The post-mistress took the money for the registration, and, being busy at the time, requested A. to call again. In the meantime she put the letter under a glass case, to which the prisoner had access. When the letter was taken up, for the purpose of being despatched, it was found that the note had been extracted:—Held, that the letter was a post letter. *Reg. v. Rogers*, 5 Cox, C. C. 293.

A. was indicted for stealing a post letter containing money, he being a sub-sorter at the general post-office. An inspector of the post-office had put some marked money into a letter, which was then sealed, and stamped with the usual postage stamp. It was addressed to Mr. H., and delivered in at the window of the post-office to another inspector, who handed it to a third. This last locked it up for the night, and on the following morning gave it to a sorter, who, according to his instructions, secretly placed it among other letters which A. in due course would have to sort. He opened and secreted the letter, abstracting the money, which was found upon him. It was no

part of the ordinary duty of the inspector to receive letters at the window, but the whole scheme was arranged for the detection of A.:—Held, that he could not be convicted of stealing a post letter. *Reg. v. Shepherd*, Dears. C. C. 606; 25 L. J., M. C. 52; 2 Jur., N. S. 96.

A servant, being sent with a letter, and a penny to pre-pay the postage of it at a receiving-house, found the door shut, and in consequence put the penny inside the letter, and fastened it in by means of a pin, and then put the letter into an unpaid letter-box. A messenger in the general post-office stole this letter, with the penny in it:—Held, that he might be convicted of stealing a post letter containing money, although the money was not put into the letter for the purpose of being conveyed, by means of it, to the person to whom it was addressed. *Reg. v. Monce*, Car. & M. 234.

Indictment.—A post-office order, for the payment of 5*l.* in the ordinary form, is a warrant and order for the payment of money, and may be so described in an indictment for larceny. *Reg. v. Gilchrist*, 2 M. C. C. 233; Car. & M. 224.

In an indictment on 7 Will. 4 & 1 Vict. c. 36, s. 26, for secreting a post letter, it is not necessary to state the purpose for which the letter was secreted. *Reg. v. Wynn*, 2 C. & K. 859; 1 Den. C. C. 365; T. & M. 32; 18 L. J., M. C. 51.

Evidence.—Possession by a letter carrier of a bank note some months after it has been sent by post and lost, is not sufficient evidence of a felonious stealing by him, although not accounted for otherwise than by his mere assertion that he had found it. *Reg. v. Smith*, 3 F. & F. 123.

At the trial of a person on 52 Geo. 3, c. 143, s. 2, for embezzling a letter containing a bill of exchange, he being at the time employed under the post-office, it was sufficient to prove that such person acted in the service of the post-office, and it was not necessary to go into proof of his appointment. *Rea v. Rees*, 6 C. & P. 606.

Retaining Post Letters.—A letter containing a post-office order, directed to John Davies, was misdelivered to John Davis, one of the prisoners. Not being able to read, he took it to W. D., the other prisoner, who read it to him. He then said the letter and order were not for him, but was advised by W. D. to keep them and get the money. Both prisoners then went to the post-office, obtained the money, and appropriated it to their own use:—Held, that a conviction for larceny of the order could not be supported. *Reg. v. Davis*, Dears. C. C. 640; 7 Cox, C. C. 104; 25 L. J., M. C. 91; 2 Jur., N. S. 478. *See* 7 Will. 4 & 1 Vict. c. 36, s. 31.

Where a letter enclosing a cheque was directed to James Mucklow, St. Martin's-lane, Birmingham, and no person of that name lived there, but the prisoner lived about ten yards from St. Martin's-lane, and another James Mucklow lived in New Hall-street; and the prisoner, in consequence of a message left by the postman, got the letter from the post-office, and appropriated the cheque to his own use:—Held, that it was not a felonious taking. *Rea v. Mucklow*, Car. C. L. 280; 1 M. C. C. 160.

e. Fraudulent Bailees.

Statute.—By 24 & 25 Vict. c. 96, s. 3, *who-*

soccer, being a bailee of any chattel, money, or valuable security, shall fraudulently take or convert the same to his own use, or the use of any person other than the owner thereof, although he shall not break bulk or otherwise determine the bailment, shall be guilty of larceny; and may be convicted thereof upon an indictment for larceny; but this section shall not extend to any offence punishable on summary conviction. (Former provision, 20 & 21 Vict. c. 54, s. 4.)

Who is a Bailee—Keeper of Shire-hall.]—A hall-keeper appointed by the justices, is not bailee of any of the contents of the shire-hall, but is the servant of the inhabitants, and, if he converts to his own use any of the property committed to his care, he may be indicted for larceny. *Reg. v. Winbow*, 5 Cox, C. C. 346. See also *Reg. v. Marsh*, *ante*, col. 349.

Receiving Money on behalf of another.]—A person who receives money on behalf of another, does not thereby become a bailee of the money. *Reg. v. Hoare*, 1 F. & F. 647.

Receiving Money to buy Goods.]—The prosecutor gave the prisoner money to buy half a ton of coals for him. He bought the coals, and took a receipt in his own name, and used his own horse and cart to fetch them, but on the way home he appropriated a portion of the coals to his own use, and afterwards pretended to the prosecutor that he had delivered to him the full quantity:—Held, that even if it was necessary to shew a specific appropriation of the coals to the prosecutor, there was sufficient evidence of such appropriation, and that the prisoner was rightly convicted of larceny as a bailee. *Reg. v. Bunkhall*, L. & C. 371; 9 Cox, C. C. 419; 33 L. J. M. C. 75; 10 Jur., N. S. 216; 9 L. T. 778; 12 W. R. 414.

A carrier who, receiving money to procure goods, obtained and duly delivered the goods, but fraudulently retained the money, may be convicted of larceny as a bailee. *Reg. v. Wells*, 1 F. & F. 109.

The prisoner was employed by the prosecutor to fetch coals from C. Before each journey the prosecutor made up to the prisoner 24*l.*; out of which he was to pay for the coals, keep 23*s.* for himself, and if the price of the coal, with the 23*s.*, did not amount to 24*l.*, to keep the balance in hand to the credit of the next journey. It was the prisoner's duty to pay for the coal as he obtained it with the money received from the prosecutor; and the prosecutor did not know but that he did so; but provided he was supplied with the coal, and not required to pay more than the proper price for it, it was immaterial to the prosecutor in what manner the prisoner paid for it. On the 20th March, the prisoner had a balance of 3*l.* in hand, and the prosecutor gave him 21*l.* to make up 24*l.* for the next journey. The prisoner did not buy any coal, but fraudulently appropriated it:—Held, that a conviction for larceny of the 21*l.* as a bailee was right. *Reg. v. Aden*, 29 L. T. 467.

Carrier selling part of Goods.]—A carrier employed by the prosecutor to deliver in his (the prisoner's) cart a boat's cargo of coals to persons named in a list, to whom only he was authorized to deliver them, and having fraudulently sold

some of the coals, and appropriated the proceeds, is properly convicted of larceny as a bailee. *Reg. v. Davies*, 14 L. T. 491; 14 W. R. 679.

Delivery of Goods for Sale.]—A person delivered two brooches to the prisoner to sell for him at 200*l.* for one and 115*l.* for the other, and he was to have them for a week for that purpose; but two or three days' grace might be allowed. After ten days had elapsed, he sold them, with other jewellery, for 250*l.*, but arranged with the vendee that he might redeem the brooches for 110*l.* before September:—Held, that this amounted to a fraudulent conversion of the brooches to his own use by a bailee within 24 & 25 Vict. c. 96, s. 3. *Reg. v. Henderson*, 11 Cox, C. C. 593; 23 L. T. 628.

A traveller was entrusted with pieces of silk (about 95 yds. each) to carry about with him for sale to such customers as he might procure. It was his duty to send by the next post after sale the names and addresses of the customers to whom any might have been sold, and the numbers, quantities, and prices of the silk sold. All goods not so accounted for remained in his hands and were considered by his employers as stock. At the end of each half-year it was his duty to send in an account for the entire six months, and to return the unsold silk. Within six months after four pieces of silk had been delivered to him, the traveller rendered an account of the same, and entered them as sold to two persons, with instructions to his employers to send invoices to the alleged customers. It turned out that this was false, and that he had appropriated the silk to his own use:—Held, that he could be properly convicted of larceny as a bailee. *Reg. v. Richmond*, 29 L. T. 408.

Delivery of Animals to Sell.]—A drover employed to drive pigs and paid the expenses of driving them, being paid wages by the day, but having the liberty of driving the cattle of any other person, is a bailee. *Reg. v. Hey*, T. & M. 209; 1 Den. C. C. 602; 2 C. & K. 983; 3 Cox, C. C. 582; 14 Jur. 154.

Delivery of Bills of Exchange to get Discounted.]—The prosecutor asked prisoner if he could get bills of exchange discounted, and prisoner replied that if prosecutor was a person of credit he could get his discounted. Three bills were then drawn by prisoner payable to his order, which prosecutor accepted, and delivered to the prisoner to get discounted. The proceeds of the discounting were to be handed to the prosecutor, less the prisoner's commission, or the bills to be returned. The prisoner being pressed by a creditor for a debt, less than the amount of the bill indorsed to him, gave one of the bills in payment, representing it as his own bill, and asking the creditor to discount the balance of the bill. The bill was not indorsed upon the condition of the creditor's discounting the balance; and the jury found that it was the prisoner's intention, when he indorsed the bill, to pass the property in it absolutely to the creditor:—Held, that he might properly be convicted of larceny as a bailee of a bill of exchange under 24 & 25 Vict. c. 96, s. 3. *Reg. v. Oakenham*, 13 Cox, C. C. 349; 46 L. J. M. C. 125; 35 L. T. 490.

— **Delivery of Bills of Exchange for Particular Purpose.**—Whilst in treaty with Messrs. G. & P. for the sale and transfer of a public-house licence, the prisoner was required by them to give security for the purchase-money before they would assist him in procuring a transfer. To enable him to give the required security, the prosecutor accepted three bills of exchange drawn upon him by the prisoner, which the latter was to deposit with G. & P. by way of security, and not negotiate or use for any other purpose, and if the transfer was not effected, was to return to the prosecutor. The prisoner, instead of depositing them with G. & P., converted two of them to his own use :—Held, that he was not a bailee within s. 3 of 24 & 25 Vict. c. 96, and could not be convicted under that section. *Reg. v. Cosser*, 13 Cox, C. C. 187.

— **Trustee of Friendly Society.**—A., who was a trustee of a friendly society, was appointed by a resolution of the society to receive money from the treasurer, and carry it to the bank. He received the money from the treasurer's clerk, but instead of taking it to the bank, he applied it to his own purposes. He was indicted for stealing, as bailee of the money of the treasurer, and also for a common law larceny, the money being laid as that of the treasurer. The 18 & 19 Vict. c. 63, s. 18, vests the property of friendly societies in the trustees, and directs that in all indictments the property shall be laid in their names :—Held, that A. could not be convicted of larceny as a bailee. *Reg. v. Loose*, Bell, C. C. 259 ; 8 Cox, C. C. 302 ; 29 L. J., M. C. 132 ; 6 Jur., N. S. 513 ; 2 L. T. 254 8 W. R. 422.

A member of two unenrolled benefit clubs, paid as secretary, and intrusted with the funds to deposit in the bank in the joint names of himself and the treasurer, dishonestly appropriating to himself the sums intrusted to him, cannot be found guilty of larceny as a bailee. *Reg. v. Marsh*, 3 F. & F. 523.

— **Where Summary Proceedings.**—Boot and shoe manufacturers gave out to their workmen leather and materials to be worked up, which were entered in the men's books and charged to their debit. The men might either take them to their own homes to work up, or work them up upon the prosecutors' premises ; but in the latter case they paid for the seats provided for them. When the work was done, they received a receipt for the delivery of the leather and materials and payment of the work. If the leather and materials were not re-delivered, they were required to be paid for. The prisoner Daynes was in the prosecutors' employ, and received materials for twelve pairs of boots ; he did some work upon them, but instead of returning them, sold them to the prisoner Warner. These materials were entered in the prosecutors' books to Daynes' debit, but omitted by mistake to be entered in Daynes' book :—Held, that Daynes could not be convicted of larceny as a bailee, under 24 & 25 Vict. c. 96, s. 3, as the offence of which he had been guilty was punishable summarily under 13 Geo. 2, c. 8. *Reg. v. Daynes*, 29 L. T. 468.

— **Whether Wife can be a Bailee.**—B. was charged with larceny as a bailee. B. was a married woman, living with her husband, and at the request of a lodger in her husband's house

took charge of his box, containing money. She afterwards fraudulently stole the money, and converted it to her own use. The husband knew nothing whatever of the transaction :—Held, that she was guilty of larceny as a bailee. *Reg. v. Robson*, L. & C. 93 ; 9 Cox, C. C. 29 ; 31 L. J., M. C. 22 ; 8 Jur., N. S. 64 ; 5 L. T. 402 ; 10 W. R. 61.

Where husband and wife were jointly indicted for larceny, as bailees, and it was proved that they took charge of the property, but the wife alone disposed of it afterwards :—Held, that neither could be convicted ; the wife, because she could not be a bailee ; the husband, because he was not proved to have taken part in the conversion. *Reg. v. Denmour*, 8 Cox, C. C. 440. *But see preceding case.*

— **Deed Entrusted to a Professional Person for the purpose of Transfer of Mortgage.**—The prosecutor advanced money to the prisoner, a solicitor's clerk, upon the deposit of a deed conveying the equity of redemption to the prisoner in a house of his own, and subsequently, he obtained a legal mortgage from him as security for the sums so advanced. The prisoner then obtained from the prosecutor the deed conveying the equity of redemption on the representation that he had found a person who would take a transfer of the mortgage. The prisoner then obtained 140*l.* from another person on the deposit of the deed with him without notice of the prosecutor's mortgage, and appropriated the money to his own use. The judge at the trial directed the jury that the prisoner was a bailee of the deed, and the jury found that he had fraudulently converted it to his own use :—Held, that the direction was right, and that the prisoner was properly convicted of larceny as a bailee. *Reg. v. Tonkinson*, 14 Cox, C. C. 603 44 L. T. 821 ; 45 J. P. 814.

Bailment—Return of Specific Things.—A bailment under this section has reference to something deposited with another to be returned in specie, and does not apply to the case of a treasurer of a money club, who is under no obligation to return to the members the specific coins intrusted to him. *Reg. v. Hassall*, L. & C. 58 ; 8 Cox, C. C. 491 ; 30 L. J., M. C. 175 ; 7 Jur., N. S. 1064 ; 4 L. T. 561 ; 9 W. R. 708. *S. P.*, *Reg. v. Garrett*, 8 Cox, C. C. 368 ; 2 F. & F. 14.

— **Assent of Bailor.**—A., being somewhat tipsy, lay on the ground, partly asleep, and while in that state saw the prisoner take his watch out of his pocket, which he took no steps to prevent, believing that the prisoner, with whom he had been acquainted for some time, was acting solely from friendly motives :—Held, that this evidence disclosed a sufficient bailment to bring the case within the above enactment. *Reg. v. Reeves*, 5 Jur., N. S. 716.

— **Money obtained by Fraud.**—An indictment charged the prisoner with obtaining 26*l.* 5*s.*, the moneys of H., by false pretences. According to the prosecutor's evidence, he was induced to part with the money on the prisoner's statement that he was to pay 13*l.* for a pair of carriage horses. No such averment was contained in the indictment. It was urged that the prisoner might be convicted of larceny as a bailee ; but the money having been obtained by fraud, and

the prosecutor having parted with all control as well over it as with the possession :—Held, that there was no bailment, and that he could not be convicted. *Reg. v. Hunt*, 8 Cox, C. C. 495.

— **By Licence.**—A bailment under the 21 & 22 Vict. c. 54, s. 4, does not necessarily mean a bailment by contract, but a bailment by licence is sufficient—per Martin, B. *Reg. v. Robson*, L. & C. 93; 9 Cox, C. C. 29; 31 L. J., M. C. 22; 8 Jur., N. S. 64; 5 L. T. 402; 10 W. R. 61.

— **No Contract concluded or made.**—The prisoner found two heifers which had strayed, and put them on his own marshes to graze. Soon afterwards he was informed by S. that they had been put on S.'s marshes and had strayed, and a few days after that they belonged to H. The prisoner left them on his marshes for a day or two, and then sent them to a long distance as his own property. He then told S. that he had lost them, and denied all knowledge of them. The jury found (1) that at the time the prisoner found the heifers he had reasonable expectation that the owner could be found, and that he did not believe that they had been abandoned by the owner. (2) That at the time of finding them he did not intend to steal them, but that the intention to steal came on him subsequently. (3) That the prisoner when he sent them away did so for the purpose and with the intention of depriving the owner of them, and appropriating them to his own use :—Held, that a conviction of larceny, or of larceny as bailee, could not be sustained under the above circumstances. *Reg. v. Matthews*, 28 L. T. 645.

Indictment—Form.—A bailee charged with fraudulently converting bailed property under 20 & 21 Vict. c. 54, s. 4, was indicted in the ordinary form as for larceny, with a conclusion contra formam :—Held, good. *Reg. v. Haigh*, 7 Cox, C. C. 403.

Evidence.—To sustain a charge of larceny by a bailee it is necessary to prove some act of conversion inconsistent with the purposes of the bailment. *Reg. v. Jackson*, 9 Cox, C. C. 505.

4. TAKING IN PARTICULAR PLACES.

a. From the Person.

What a sufficient Asportation.—See *cases ante*, col. 327.

What is.—A. asked B. what time it was, and B. took out his watch to tell him, holding his watch loosely in both hands. A. caught hold of the ribbon and key attached to the watch and snatched it from B., and made off with it :—Held, no robbery, but a stealing from the person. *Reg. v. Hughes*, 2 C. & K. 214.

On a trial for robbery and stealing from the person, it was proved that the prosecutor, who was paralysed, received, whilst sitting on a sofa in his room, a violent blow on the head from one of the prisoners, whilst the other went to a cupboard in the same room and stole therefrom a cash-box :—Held, that it was a question for the jury whether the cash-box was at the time under the protection of the prosecutor. If so, the charge of stealing from the person would be sustained. *Reg. v. Selway*, 8 Cox, C. C. 255.

A man went to bed with a prostitute, having put his watch in his hat on the table; the woman stole the watch while he was asleep :—Held, that the offence was not a stealing from the person. *Reg. v. Hamilton*, 8 C. & P. 49.

b. In a Dwelling-house.

To the Value of 5*l.*—By 24 & 25 Vict. c. 96, s. 60, *whosoever shall steal in any dwelling-house any chattel, money, or valuable security (as to interpretation of this word, see s. 1) to the value in the whole of 5*l.* or more, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (Former provisions, 7 & 8 Geo. 4, c. 29, s. 12, and 12 Anne, st. 1, c. 7, respectively repealed.)*

How Value Ascertained.—If a prisoner, who was in the service of the prosecutor, stole a quantity of lace in several pieces, the pieces together being above 5*l.* in value, and brought them all out of his master's house at the same time, this was a capital offence, although it was shewn that the prisoner had the opportunity of stealing the lace by a piece at a time, and that no one of the pieces was worth 5*l.* *Rev v. Jones*, 4 C. & P. 217.

Dwelling-house—What is.—Stealing in a bedroom over a stable in a yard, not under the same roof, nor having any direct communication with the house in which the prosecutor resides, cannot be properly charged as a stealing in his dwelling-house. *Rev v. Turner*, 6 C. & P. 407.

If one, on going to bed, puts his clothes and money by the bed-side, they are under the protection of the dwelling-house, and not of the person; and, therefore, a party stealing them may be convicted of stealing in a dwelling-house. *Rev v. Thomas*, Car. C. L. 295.

A man went to bed with a prostitute, having put his watch in his hat on the table; the woman stole his watch whilst he was asleep :—Held, that the offence was that of stealing in a dwelling-house. *Reg. v. Hamilton*, 8 C. & P. 49.

Things under Protection of House.—Under 12 Anne, st. 1, c. 7, the larceny must have been of things under the protection of the house, and not of any person within it, therefore not of money in the pocket. *Rev v. Owen*, 2 East, P. C. 645; 2 Leach, C. C. 572.

Property left by mistake at a house and delivered to the occupier, under the supposition that it was for one of the persons in the house, is entitled to the protection of the house. *Rev v. Carroll*, 1 M. C. C. 89.

Guest's Goods Stolen by Lodger.—The goods of a lodger's guest are under the protection of the dwelling-house; therefore a lodger who invites a man to his room, and then steals his goods to the value of 40*s.* (now 5*l.*) when not about his person, is liable to be found guilty of stealing in a dwelling-house. *Rev v. Taylor* R. & R. C. C. 418.

Stolen by Owner.]—Stealing in a dwelling-house to the value of 5*l.* or more by the owner of the house was within 7 & 8 Geo. 4, c. 29, s. 12. *Reg. v. Bowden*, 2 M. C. C. 285; 1 C. & K. 147.

Indictment — Whose Dwelling-house and Goods.]—A member of a club was indicted for stealing some of the plate used at the club-house. The house-steward slept in the house, and stated, that he had the charge of all the plate, and was responsible for it; but the plate was delivered every night to the under-butler, who was appointed by the club, and by him placed in a chest in the pantry. The indictment described the goods as the property of the house-steward, and alleged it to have been stolen in his dwelling-house:—Held, that upon the evidence, it was wrong in both respects, inasmuch as his sleeping in the house was only as a servant of the club, and his alleged responsibility was not coupled with any custody of the property, either by himself or his own servants. *Reg. v. Ashley*, 1 C. & K. 198.

— **Two Counts.]**—A. and B. were found guilty on an indictment containing two counts—one for stealing in a dwelling house above the value of 5*l.*, and the other for simple larceny, and the judgment was, that they should be transported for ten years for the felony aforesaid:—Held, that the judgment was bad; as either the indictment alleged one felony in two counts, in which case the judgment was bad for uncertainty, the court not having the power to apply it to the particular count in the indictment which would support it; or, it alleged a separate felony on each count, in which case, the jury having found but one offence, the judgment is bad, because the word felony cannot be treated as nomen collectivis. *Campbell v. Reg. (in error)*, 2 New Sess. Cas. 297; 11 Q. B. 799; 15 L. J., M. C. 76; 10 Jur. 329.

— **Particular Goods need not be Specified.]**—In an indictment for attempting to steal goods in a dwelling-house, it is not necessary to specify any particular article or articles. A general allegation of an attempt to steal "goods and chattels" is sufficient. *Reg. v. Johnson*, L. & C. 489; 34 L. J., M. C. 24; 10 Jur., N. S. 1160; 13 W. R. 101.

With Menaces or Threats.]—By 24 & 25 Vict. c. 96, s. 61, *whosoever shall steal any chattel, money or valuable security in any dwelling-house, and shall by any menace or threat put any one being therein in bodily fear, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years, and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (Former provision, 7 Will. 4 & 1 Vict. c. 86, s. 5.)*

Indictment.]—An indictment for stealing in the dwelling-house, persons being therein and put in fear, must state that the persons were put in fear by the prisoners. *Rea v. Etherington*, 2 Leach, C. C. 671; 2 East, P. C. 635.

Who are Principals.]—In order to constitute the offence of stealing in a dwelling-house, and by menaces and threats putting persons being therein in bodily fear, it is not necessary that all the persons engaged in the crime should be actually in the house; and if one remains outside he may be equally guilty of using menaces and threats if there was a common purpose to inspire terror. *Reg. v. Murphy*, 6 Cox, C. C. 340.

Evidence.]—A threat to a person outside the house is not within the words of the statute, but it is a circumstance from which the jury may infer the line of conduct inside the house. *Id.*

The act of placing persons with their faces against a wall, and desiring them not to look round, without the use of any actual violence, is evidence of an intention to obtain money by threats, and the bodily fear may be inferred, although the persons so treated may deny that such acts created alarm or fear. *Id.*

c. In Manufactories.

Statute.]—By 24 & 25 Vict. c. 96, s. 62, *whosoever shall steal, to the value of 10*s.*, any woollen, linen, hempen or cotton yarn, or any goods or article of silk, woollen, linen, cotton, alpaca, or mohair, or of any one or more of those materials mixed with each other, or mixed with any other material, whilst laid, placed or exposed, during any stage, process or progress of manufacture, in any building, field or other place, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (Former provision, 7 & 8 Geo. 4, c. 29, s. 16.)*

Goods Laid or Exposed during Process.]—Where, on an indictment on 18 Geo. 2, c. 27, for stealing yarn out of a bleaching-ground, it appeared that the yarn had been spread on the ground, but at the time of the theft was in heaps, in order to be carried into the house:—Held, that as there was no occasion to leave it in that state, it was not within the statute, which uses the words, "laid, placed, or exposed, during any stage, process or progress of manufacture, in any building, field, or other place." *Rea v. Hugill*, 2 Russ. C. & M. 245.

Building used for Manufacturing.]—On an indictment on 18 Geo. 2, c. 27, for stealing calico placed to be printed, &c., in a building made use of by a calico printer, for printing, drying, &c.:—Held, that in order to support the capital charge, it was necessary to have proved that the building, from which the calico was stolen, was made use of either for printing or drying calico. *Rea v. Dixon*, R. & R. C. C. 53; 1 East, P. C. 512.

Place—What is.]—By 17 Geo. 3, c. 56, s. 10, it shall be lawful for any two justices, upon complaint made to them upon oath that there is cause to suspect that purloined or embezzled materials, used in certain manufactures, are concealed in any dwelling-house, outhouse, yard, garden, or other place or places, to issue a search

warrant for the search, in the daytime, of every such dwelling-house, &c.; and if any such materials, suspected to be purloined or embezzled, are found therein, to cause the same, and the person in whose house, outhouse, yard, garden, or other place they are found, to be brought before two justices; and if the person shall not give an account to their satisfaction of how he came by the same, he shall be adjudged guilty of a misdemeanor.—Held, that a warehouse occupied for business purposes only, and not within the curtilage of or connected with any dwelling-house, was a place within the section. *Reg. v. Edmundson*, 2 El. & El. 77; 8 Cox, C. C. 212; 28 L. J., M. C. 213; 5 Jur., N. S. 1351.

d. From Mines.

Statute.
whoever shall steal any ore of any metal, or any lapis calaminaris, manganese, or mundick, or any lead, black coke, or black lead, or any coal or cannel coal, from any mine, bed, or vein thereof respectively, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (Previous enactment, 7 & 8 Geo. 4, c. 29, s. 37.)

Removal with Intent to Defraud.]—By s. 39, *whoever, being employed in or about any mine, shall take, remove, or conceal any ore of any metal, or any lapis calaminaris, manganese, mundick, or other mineral found or being in such mine, with intent to defraud any proprietor of or any adventurer in such mine, or any workman or miner employed therein, shall be guilty of felony. (Previous enactment, 2 & 3 Vict. c. 58, s. 10. Punishment as in the last section.)*

Before this Enactment.]—It is not larceny for miners employed to bring ore to the surface, and paid by the owners according to the quantity produced, to remove from the heaps of other miners ore produced by them, and add it to their own, in order to increase their wages, the ore still remaining in the possession of the owners. *Reg. v. Webb*, 1 M. C. C. 431.

Indictment.]—An indictment alleging, that A. B., C. D., and persons employed in a mine, in the parish of, &c., in the county of Cornwall, did steal ore, the property of the adventurers in the said mine, then and there being found, does not sufficiently shew the ore to have been in the mine when stolen. *Reg. v. Trevenner*, 2 M. & Rob. 476.

Trial—Election of Counts.]—Where a prisoner was indicted in one count for stealing from the mine of H. J. G. coal, the property of H. J. G., and in the same count for stealing from the mines of thirty other proprietors coal, the property of each of such other proprietors, and it appeared that all the coal so alleged to have been stolen, had been raised at one shaft:—Held, first, that the prosecutor could not be called upon to elect on which charge he would go to the jury. *Reg. v. Bleasdale*, 2 C. & K. 765.

—**Evidence of other Cases.]**—Held, secondly, that although, for the sake of convenience, in trying the prisoner the judge might direct the jury to confine their attention to one particular charge, yet that the prosecutor was entitled to give evidence in support of all the charges in the indictment. *Id.*

Held, thirdly, that proof of such charges might be relied on, in order to shew a felonious intent. *Id.*

e. From Ships in Ports or on Navigable Rivers or Wharves.

In Ports or Canals.]—By 24 & 25 Vict. c. 96, s. 63, *whoever shall steal any goods or merchandise in any vessel, barge, or boat of any description whatsoever in any haven, or in any port of entry or discharge, or upon any navigable canal, or in any creek or basin belonging to or communicating with any such haven, port, river, or canal, or shall steal any goods or merchandise from any dock, wharf, or quay adjacent to any such haven, port, river, canal, creek, or basin, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (Former provision, 7 & 8 Geo. 4, c. 29, s. 17.)*

Luggage.]—The luggage of a passenger going by a steamboat, was within the words "goods or merchandise" in 7 & 8 Geo. 4, c. 29, s. 17. *Reg. v. Wright*, 7 C. & P. 159.

Stealing on a Creek.]—An indictment for stealing goods on a navigable river was not satisfied by evidence of a stealing on one of its creeks. *Reg. v. Pike*, 1 Leach, C. C. 317; 2 East, P. C. 647.

From Ships in Distress.]—By s. 64, *whoever shall plunder or steal any part of any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore, or any goods, merchandise, or articles of any kind belonging to such ship or vessel, shall be guilty of felony;*

And the offender may be indicted and tried either in the county or place in which the offence shall have been committed, or in any county or place next adjoining. (Former provision, 7 Will. 4 & 1 Vict. c. 87, s. 8. Punishment as in preceding section.)

f. Abroad or on the High Seas.

(24 & 25 Vict. c. 96, s. 115.)

Jurisdiction on High Seas.]—If a person is apprehended in a borough for a larceny committed on the high seas, he may be tried for that larceny before the court of quarter sessions of the borough. *Reg. v. Peel*, L. & C. 331; 9 Cox, C. C. 220; 32 L. J., M. C. 65; 8 Jur., N. S. 1185; 7 L. T. 336; 11 W. R. 40.

Piratically stealing a ship's anchor and cable was a capital offence by the marine laws, and triable under 28 Hen. 8, c. 15; 39 Geo. 3, c. 37, not extending to this case. *Reg. v. Curling*, R.

& R. C. C. 123. *And see post*, JURISDICTION (*Admiralty*).

— **Offence Committed Abroad.**—A person had stolen goods in Guernsey and brought them to England, where he was taken and committed for trial:—Held, that Guernsey not being a part of the United Kingdom, he could not be convicted of larceny, for having them in his possession here, nor of receiving in England the goods so stolen in Guernsey. *Reg. v. Debruiel*, 11 C. C. 207.

If a larceny is committed out of the kingdom, though within the king's dominions (e. g. in Jersey), bringing the things stolen into this kingdom will not make it larceny here. *Reg. v. Proves*, 1 M. C. C. 349; *S. P.*, *Reg. v. Madge*, 9 C. & P. 29.

Some securities were transmitted on 2nd June by the prosecutor to a customer in Paris; they were traced safely as far as Calais, and were stolen from the train after leaving that place; on the 4th September the prisoner was found dealing with them, and was tried in England for larceny and feloniously receiving:—Held, that the court had no jurisdiction, and that the prisoner must be acquitted. *Reg. v. Carr* (No. 1), 15 Cox, C. C. 131, n.

5. INDICTMENT.

a. Generally.

Several Counts.—By 24 & 25 Vict. c. 96, s. 5, *it shall be lawful to insert several counts in the same indictment against the same person for any number of distinct acts of stealing, not exceeding three, which may have been committed by him against the same person within the space of six months from the first to the last of such acts, and to proceed thereon for all or any of them.* (Similar to 14 & 15 Vict. c. 100, s. 16.)

Things Stolen at same Time — Two Indictments.—Where a person stole two pigs belonging to the same person at the same time, and after being convicted and punished for stealing one of the pigs, was indicted at a subsequent assize for stealing the other:—Held, that this might legally be done; but semble, that in such a case, the second prosecution ought not to be proceeded with. *Reg. v. Brettell*, Car. & M. 609.

Statement of Value.—By 24 & 25 Vict. c. 96, s. 2, *every larceny, whatever be the value of the property stolen, shall be deemed to be of the same nature, and shall be subject to the same incidents in all respects as grand larceny was before the 21st of June, 1827; and every court whose power as to the trial of larceny was before that time limited to petty larceny, shall have power to try every case of larceny, the punishment of which cannot exceed the punishment prescribed for simple larceny, and also to try all accessories to such larceny.*

The original distinction of grand and petty larceny made it necessary, in indictments for larceny, to allege the value of the chattel stolen, in order to allot the punishment. *Reg. v. Gamble*, 16 M. & W. 384.

Though, to make a thing the subject of an indictment for a larceny, it must be of some value, and stated to be so in the indictment, yet

it need not be of the value of some coin known to the law, that is to say, of a farthing at the least. *Reg. v. Morris*, 9 C. & P. 349.

Servant.—An indictment charged that A. on, &c., being the servant of K., on the same day, &c., one gold ring, &c., then and there being his goods and chattels, feloniously did steal:—Held, that the fair import of the charge was, that A. was the servant of K. at the time when the theft was committed. *Reg. v. Somerton*, 7 B. & C. 463.

An indictment charged that the prisoner, whilst a servant of A., stole the money of A. The prisoner was not the servant of A., but the servant of B., and the money which he stole was the money of B., but in the possession of A. as the agent of B.:—Held, that the allegation as to the prisoner being servant might be rejected as surplusage, and the prisoner convicted of simple larceny, the money being properly alleged to belong to A., who had a special property therein. *Reg. v. Jennings*, Dears. & B. C. C. 447; 7 Cox, C. C. 397; 4 Jur., N. S. 146.

Esquire.—If goods are laid in an indictment as "the property of A. W. G., Esq.," the addition is not material, and if he is not an esquire, it is no ground for an acquittal. *Reg. v. Ogilvie*, 2 C. & P. 230.

Feloniously taken from Company.—In an indictment against a servant of the West India Dock Company, for stealing a quantity of canvas and hessen belonging to the company from their warehouses, it was sufficient to state the property to be "the goods and chattels of the West India Dock Company," and not necessary, notwithstanding the words of the 1 & 2 Will. 4, c. lii. s. 133, to allege, in addition, that it was feloniously taken from the company. *Reg. v. Stoke*, 8 C. & P. 151.

Feloniously—Partnership Property Stolen.—An indictment under 31 & 32 Vict. c. 116, s. 1, alleging that B. was a member of a co-partnership consisting of B. and L., and that B. being a member, eleven bags of cotton waste, the property of the co-partnership, feloniously did steal, take and carry away, contrary to the statute, is not bad for introducing the word "feloniously." *Reg. v. Butterworth*, 12 Cox, C. C. 132; 25 L. T. 850.

Contra Formam Statuti.—By 7 & 8 Geo. 4, c. 29, s. 25, if any person shall steal any horse, mare, &c., or shall wilfully kill any of such cattle with intent to steal the carcass, every such offender shall be guilty of felony, and on conviction suffer death. The 2 & 3 Will. 4, c. 62, s. 1, reduced the punishment to transportation for life; and 7 Will. 4 & 1 Vict. c. 90, s. 1, to transportation for not less than fifteen years. An indictment charged a person with feloniously stealing a mare, saddle and bridle, and did not conclude contra formam statuti. A verdict of guilty was found:—Held, that, as stealing the mare, as well as stealing the saddle and bridle, was a felony at common law, and not created or altered in its nature by statute, the offence was correctly described in the indictment, and the statutable punishment of fifteen years' transportation would attach to the stealing the mare. *Williams v.*

Reg. (in error), 7 Q. B. 251. See 14 & 15 Vict. c. 100, s. 24.

Amendment, when Allowed.—A man was indicted for stealing nineteen shillings and sixpence. He was proved to have stolen a sovereign:—Held, that by 14 & 15 Vict. c. 100, s. 1, the court at the trial had power to amend the indictment, if necessary, by substituting the word "money" for the words "nineteen shillings and sixpence," and that by s. 18 the indictment so amended was proved. *Reg. v. Gumble*, 2 L. R., C. C. 1; 42 L. J., M. C. 7; 27 L. T. 692; 21 W. R. 299.

If in an indictment for larceny the property of the goods is laid in A., and the property is proved to be in the London Dock Company, this was amendable under 14 & 15 Vict. c. 100, s. 1. *Reg. v. Vincent*, 3 C. & K. 246; 2 Den. C. C. 464; 5 Cox, C. C. 537; 21 L. J., M. C. 109; 16 Jur. 457.

If an indictment for larceny does not state to whom the goods belong, it cannot be amended, nor is the defect cured by 14 & 15 Vict. c. 100, s. 8. *Reg. v. Ward*, 7 Cox, C. C. 421.

b. Description of Thing Stolen.

Description of Instrument.—By 14 & 15 Vict. c. 100, s. 5, in any indictment for stealing, destroying, or concealing any instrument, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known, or by the purport thereof, without setting out any copy, or facsimile thereof, or otherwise describing the same or the value thereof.

Document of Title to Lands.—By 24 & 25 Vict. c. 96, s. 28, in any indictment for any such offence relating to any document of title to lands, it shall be sufficient to allege such document to be or to contain evidence of the title or of part of the title of the person or of some one of the persons having an interest, whether vested or contingent, legal or equitable, in the real estate to which the same relates, and to mention such real estate or some part thereof. (Former provision, 7 & 8 Geo. 4, c. 29, s. 23.)

Valuable Security not relating to Land.—A prisoner was convicted on an indictment under 24 & 25 Vict. c. 96, s. 27, for stealing a valuable security, to wit, an agreement between L. and C., whereby C. was entitled to receive payment of certain sums of money, and which sums were then due and unsatisfied to C. The sums were not due till some time after the stealing:—Held, that since this section limits the term valuable security to securities other than a document of title to lands, it is material in an indictment under this section to describe the valuable security, so as to shew that it is within the section, that the description given ought to have been proved, and that, since it had not been proved, the conviction could not be supported. *Reg. v. Lowrie*, 1 L. R., C. C. 61; 36 L. J., M. C. 24; 15 L. T. 632; 15 W. R. 360.

Coin and Bank Notes.—By 14 & 15 Vict. c. 100, s. 18, in every indictment in which it shall be necessary to make any averment as to any money, or any note of the Bank of England, or any other bank, it shall be sufficient to describe such money or bank note simply as money.

without specifying any particular coin or bank note; and such allegation, so far as regards the description of the property, shall be sustained by proof of any amount of coin or of any bank note, although the particular species of coin of which such amount was composed, or the particular nature of the bank note, shall not be proved.

Notes not in Circulation.—Bank notes are properly described in an indictment for larceny within this enactment as money, although at the time when they were stolen they were not in circulation, but were in the hands of the bankers themselves. *Reg. v. West*, Dears. & B. C. C. 109; 7 Cox, C. C. 183; 26 L. J., M. C. 6; 2 Jur., N. S. 1123.

Specific Coins.—An indictment, charging a stealing of one or more specific thing or things, is not supported, except by proof of some one or more of the specific things so charged. *Reg. v. Bond*, 1 Den. C. C. 517; T. & M. 242; 4 New Sess. Cas. 143; 19 L. J., M. C. 138; 14 Jur. 390.

Therefore, an indictment charging a stealing of 70 pieces of the current coin of the realm, called sovereigns, of the value of 70*l.*, 140 pieces, called half-sovereigns, 500 pieces, &c., called crowns, &c., is not supported by proof of a stealing of a sum of money consisting of some or other of the coins mentioned in the indictment, without proof of some or one or more of the specific coins there charged to have been stolen. *Id.*

Of the Goods and Chattels of A.—In an indictment for larceny, two shillings stolen were described as "two pieces of the current silver coin of the realm, called shillings, of the value of two shillings, of the goods and chattels of S. F.," the words "goods and chattels" may be rejected as surplusage, and the indictment is good. *Reg. v. Radley*, 3 New Sess. Cas. 651; T. & M. 144; 1 Den. C. C. 450; 2 C. & K. 974; 3 Cox, C. C. 460; 18 L. J., M. C. 184; 13 Jur. 544.

Before this Enactment.—An indictment for stealing 10*l.* in moneys numbered was not sufficient; some of the pieces of which that money consisted should be specified. *Rea v. Fry*, R. & R. C. C. 482.

If the thing stolen was described as a bank post bill, and was not set out, the court could not take judicial notice that it was a promissory note, or that it was such an instrument as under 2 Geo. 2, c. 25, might be the subject of larceny, although it was described as made for the payment of money. *Rea v. Chard*, R. & R. C. C. 488.

Where an indictment described a bank note as signed by A. H. for the Governor and Company of the Bank of England, and a prisoner was convicted; such conviction was bad, there being no evidence of A. H.'s signature. *Rea v. Craven*, R. & R. C. C. 14; 2 East, P. C. 601.

Dollars or Portugal money, not current by proclamation, were not goods within 24 Geo. 2, c. 45. *Rea v. Leigh*, 1 Leach, C. C. 52; S. P. *Rea v. Grimes*, 2 East, P. C. 646.

Amount of Money Stolen.—The prosecutor bought a horse, and was entitled to the return of 10*s.*, chap money, out of the purchase-money. The prosecutor, afterwards, on the same day, met the seller, the prisoner, and others, and asked

the seller for the 10s., but he said he had no change, and offered the prosecutor a sovereign, who could not change it. The prosecutor asked whether anyone present could give change. The prisoner said he could, but would not give it to the seller of the horse, but would give it to the prosecutor, and produced two half-sovereigns. The prosecutor then offered a sovereign with one hand to the prisoner, and held out the other for the change. The prisoner took the sovereign and put one half-sovereign only in the prosecutor's hand, and slipped the other into the hand of the seller, who refused to give it to the prosecutor, and ran off with it:—Held, that the indictment rightly charged the prisoner with stealing a sovereign. *Reg. v. Twist*, 29 L. T. 546.

The prisoner was the daughter of the proprietor of a "merry-go-round," and was in charge thereof, and the price of a ride thereon was one penny for each person. The prosecutrix got into the machine and handed to the prisoner a sovereign in payment of the ride, asking for the change. The prisoner gave the prosecutrix elevenpence, and the merry-go-round being about to start, said she would give her the rest of the change when the ride was over. The prosecutrix assented to this, and about ten minutes after, when the ride was over, found the prisoner attending to a shooting gallery, and asked her for her change, when the prisoner replied that she had only received a shilling from her, and declined to give any more. The indictment charged the prisoner with stealing nineteen shillings in money of the moneys of the prosecutrix. The prisoner was convicted of stealing the nineteen shillings:—Held, by a majority of the judges, that the conviction was wrong and must be quashed. *Reg. v. Bird*, 12 Cox, C. C. 257; 42 L. J., M. C. 44; 27 L. T. 800; 21 W. R. 448.

Cheques.—The servant of the drawer of a cheque on bankers, to whom it is given to deliver to a third person, appropriating the value to his own use, may be charged in an indictment for stealing a valuable security, to wit, a cheque of the value specified, without stating the drawee to be bankers. *Reg. v. Heath*, 2 M. C. C. 33.

Handkerchiefs in a Piece.—A set of new handkerchiefs in a piece may be described as so many handkerchiefs, though they are not separated one from another, if the pattern designates each, and they are described in the trade as so many handkerchiefs. *Reg. v. Nibbs*, 1 M. C. C. 25.

Tin or Iron.—In an indictment for receiving stolen tin, ingots of tin are properly described as so many pounds weight of tin. *Reg. v. Mansfield*, Car. & M. 140; 5 Jur. 661.

So it would be proper to describe a bar of iron as so many pounds of iron. *Id.*

Eggs—Description of Kind.—An indictment for stealing "three eggs of the value of twopence, of the goods and chattels of S. H.," is bad, for not stating the species of eggs, because it does not shew that the eggs stolen might not be such as are not the subject of larceny. *Reg. v. Cox*, 1 C. & K. 487.

Ham.—An indictment describing the property stolen as "one ham, of the value of 10s., of the goods and chattels of T. H.," is sufficient,

as the word "ham" has acquired a meaning which is universally understood; and it is no objection, that it may be taken to mean the ham of an animal *feræ naturæ* or of a base nature, inasmuch as the flesh of a dead animal *feræ naturæ* is the subject of larceny, and the expenditure of labour on the flesh or the skin of animals of a base nature, at common law, imparts to it value, and makes it also the subject of larceny. *Reg. v. Gallears*, 3 New Sess. Cas. 704; 1 Den. C. C. 501; 2 C. & K. 981; T. & M. 196; 19 L. J., M. C. 13; 13 Jur. 1010.

Animals *Feræ Naturæ*.—In cases of larceny of animals *feræ naturæ*, the indictment must shew that they were either dead, tame, or confined, otherwise they must be presumed to be in their original state. *Reg. v. Rough*, 2 East, P. C. 607. And see *Reg. v. Hudson*, 2 East, P. C. 611. And it is not sufficient to add "of the goods and chattels" of such a one. *Reg. v. Rough*, 2 East, P. C. 607.

Dead Animal.—An indictment for stealing a dead animal should state that it was dead; for upon a general statement that a party stole the animal, it is to be intended that he stole it alive. *Reg. v. Edwards*, R. & R. C. C. 497.

Upon an indictment for stealing a live animal, evidence cannot be given of stealing a dead one. *Id.*

But in *Reg. v. Puckering*, 1 M. C. C. 242, A. was indicted for receiving a lamb; when he received the lamb it was dead, and it was held that the indictment was sufficient, it being immaterial, as to the prisoner's offence, whether the lamb was alive or dead, his offence, and the punishment for it, being in both cases the same. This case appears to overrule *Reg. v. Edwards*.

Live Animals.—An indictment for stealing four live tame turkeys was laid in the county of H.; it appeared that the prisoner stole them alive in the county of C., and killed them there, and then brought them into the county of H.:—Held, that as the prisoner had not the turkeys in a live state in the county of H., the charge as laid was not proved, and that the word "live" in the description could not be rejected as surplusage, and therefore that the indictment was bad. *Reg. v. Halloway*, 1 C. & P. 128.

Tame Animals.—An indictment charged the prisoner with having feloniously stolen four tame pigeons:—Held, that the word "tame" sufficiently showed that they were reclaimed, and that such tame and reclaimed pigeons are the subjects of larceny, notwithstanding that they have the means of ingress and egress at pleasure. *Reg. v. Cheafor*, 2 Den. C. C. 361; T. & M. 621; 5 Cox, C. C. 367; 21 L. J., M. C. 43; 15 Jur. 1065.

Horse, Mare, or Gelding.—In an indictment for horse-stealing, the animal, whether a horse, mare, gelding, colt, or filly, may be described as a horse. *Reg. v. Aldridge*, 4 Cox, C. C. 143.

Foals and fillies were within 2 & 3 Edw. 6, c. 33, and were included in the words horse, gelding, or mare, and evidence of stealing a mare filly supported an indictment for stealing a mare. *Reg. v. Welland*, R. & R. C. C. 494.

Cow or Heifer.—An indictment for stealing a cow cannot be supported by evidence of stealing

a heifer. *Rea v. Cook*, 1 Leach, C. C. 105; 2 East, P. C. 616.

The beast, however old, is a heifer until she has had a calf. *Id.*

Sheep, Ewe, or Lamb.—An indictment for stealing a sheep is supported by proof of stealing a ewe or a ram, though the statute specifies "ram, ewe, sheep, or lamb." *Reg. v. M'Cutley*, 2 M. C. C. 34; 2 Lewin, C. C. 272.

A sheep was called in the indictment a ewe, and, by the witnesses, the proper name was said to be a ewe teg:—Held, that the description was bad. *Reg. v. Jewett*, 2 Cox, C. C. 227.

On the trial of an indictment under 7 & 8 Geo. 4, c. 29, s. 25, for stealing "one sheep," some of the witnesses stated the animal to be a sheep, others a lamb. It was between nine and twelve months old; and the jury who convicted the prisoner found, that, in common parlance, according to the usual mode of describing such animals, it would be called a lamb. Conviction held right, the word "sheep" being general. *Reg. v. Spicer*, 1 C. & K. 699; 1 Den. C. C. 82.

On an indictment for sheep-stealing, a rig sheep is properly described as "one sheep." *Rea v. Stroud*, 6 C. & P. 535.

c. Allegation and Proof of Ownership of Property.

Person to whom Goods belong must be stated.]

—An indictment for larceny, and receiving goods knowing them to have been stolen, is bad, if it does not state to whom the goods belonged. *Reg. v. Ward*, 7 Cox, C. C. 421.

Person must have Actual or Constructive Possession.—Property cannot be laid in a person who has never had either actual or constructive possession. *Rea v. Adams*, R. & R. C. C. 225.

Never in Real Owner's Possession.—The property stolen may be described as the real owner's, although it never was actually in his possession, but in the possession of his agent only. *Rea v. Remnant*, R. & R. C. C. 136.

Guest or Innkeeper.—Goods belonging to a guest, stolen at an inn, may be laid to be the property either of the innkeeper or of the guest. *Rea v. Todd*, 1 Leach, C. C. 357, n.

Washerwoman.—So goods stolen from a washerwoman may be laid to be her property. *Rea v. Parker*, 1 Leach, C. C. 357, n.

Agister.—So in the case of an agister, who takes in sheep to agist for another, they may be laid to be his property. *Rea v. Woodward*, 1 Leach, C. C. 357, n.; 2 East, P. C. 653.

Coachmaster or Owner.—The coach-glass of a gentleman's coach, standing in a coachmaster's yard, may be laid to be the property of the coachmaster. *Rea v. Taylor*, 1 Leach, C. C. 356; 2 East, P. C. 653.

Goods in Boot of Coach.—The property in goods stolen, is properly alleged to be in the driver of a coach, from the boot of which they were taken. *Rea v. Deakin*, 2 East, P. C. 653; 2 Leach, C. C. 862.

Furnished Lodgings.—The goods of a furnished lodging must be described as the lodger's goods, not as the goods of the original owner. *Rea v. Belstead*, R. & R. C. C. 411. *Rea v. Brunswick*, 1 M. C. C. 26.

Possession of Owner by Agent or Servant.—If a corn factor purchases a ship laden with corn, and sends his lighter to fetch it from the ship to his wharf, a delivery of the corn on board the lighter puts it into the possession of the corn factor, although the lighterman never delivers it at the factor's wharf. *Rea v. Spears*, 2 Leach, C. C. 825; 2 East, P. C. 568.

If a corn factor purchases the cargo of a vessel laden with corn, and sends his servant with a lighter to fetch it from the ship in loose bulk, and the servant contrives to have a certain portion of it put into sacks by the meters on board the ship, and takes the corn so sacked feloniously away in the lighter immediately from the ship, he may be indicted for stealing the property of the corn factor, although it was never put into his lighter, or otherwise reduced into the corn factor's possession. *Rea v. Abrahath*, 2 Leach, C. C. 824; 2 East, P. C. 569.

The prisoner was sent by his fellow workmen to their common employer, to get the wages due to all of them. He received the money in a lump sum, wrapped up in paper, with the names of the workmen and the sum due to each written inside:—Held, that he received the money as the agent of his fellow workmen, and not as the servant of the employer, and that, in an indictment against him for stealing it, the money was wrongly described as the property of the employer. *Reg. v. Barnes*, 1 L. R., C. C. 45; 35 L. J., M. C. 204; 12 Jur., N. S. 549; 14 L. T. 601; 14 W. R. 805.

Possession of Husband by Wife.—The wife of A. was employed by her father to sell sheep, and receive the amount at K. She did so; but before she left K. a 5l. note, which she received in payment for the sheep, was stolen from her:—Held, that the note was properly described as the property of the husband. *Rea v. Roberts*, 7 C. & P. 485.

Bailee.—The London Dock Company by mistake delivered two hogsheds of sugar to a carrier, who produced two delivery notes authorizing them to deliver two other hogsheds of sugar, the property of B. The carrier broke bulk, and was indicted for larceny:—Held, that the property was well described as the property of the London Dock Company, they having still a special property in the chattels, notwithstanding that they had parted with the possession by mistake. *Reg. v. Vincent*, 3 C. & K. 246; 2 Den. C. C. 464; 5 Cox, C. C. 537; 21 L. J., M. C. 109; 16 Jur. 457.

A. was indicted for stealing iron which he had taken from a canal while the canal was being cleaned. Property found on such occasions in the canal, if identified, was returned by the company to the owner; otherwise it was kept by the company. A. was not in the employ of the company:—Held, that the property in the iron was rightly laid in the company. *Reg. v. Rowe*, Bell, C. C. 93; 8 Cox, C. C. 139; 28 L. J., M. C. 28; 5 Jur., N. S. 274; 32 L. T., O. S. 339; 7 W. R. 236.

Churchwardens and Overseers.—Money was

stolen from an ancient poor's box fixed up in a church :—Held, that, in an indictment for stealing it, the property would be properly laid in the vicar and churchwardens ; and that an indictment in which the property was stated to be that of "J. N. and others," J. N. being the vicar, was correct, without alleging J. N. to be the vicar, or the "others" to be the churchwardens. *Reg. v. Wortley*, 2 C. & K. 283.

An indictment for stealing goods may, under 55 Geo. 3, c. 137, state them to be the goods of the overseers of the poor, for the time being, of the parish of A. ; for this will import that they belonged, at the time of the theft, to the persons who were the then overseers. *Rea v. Went*, R. & R. C. 359.

Inhabitants of a County.]—A room attached to a shire-hall, and built and used for the purpose of a ball and concert room, is within 7 Geo. 4, c. 64, s. 5, which provides, that in any indictment for any felony or misdemeanor, committed in, upon, or with respect to any court, or other building erected or maintained at the expense of any county, in, on, or with respect to any goods or chattels provided for or at the expense of the county, to be used in or with any such court, it shall be sufficient to state any such property, real or personal, to belong to the inhabitants of such county. *Reg. v. Window*, 5 Cox, C. C. 346.

A chandelier, which had been used as a fixture in the ball-room, and subsequently removed to another part of the building, but not used for any purpose, is also within the same statute, and is properly described as the property of the inhabitants of the county. *Ib.*

Bank not Registered—Public Officer.]—In an indictment for larceny, the property was laid to be in G., manager of the Dudley and West Bromwich Bank. The property belonged to the banking company, a company consisting of more than twenty partners, but no registration of it, or appointment of any manager or public officer, was proved. The indictment was amended by laying the property in W. and others, W. being one of the partners :—Held, that the ownership, as amended, was rightly laid under 7 Geo. 4, c. 64, s. 14, and that it need not have been laid in the public officer (presuming there was one), under 7 Geo. 4, c. 46, s. 9. *Reg. v. Pritchard*, 8 Cox, C. C. 461 ; L. & C. 34 ; 30 L. J., M. C. 169 ; 7 Jur., N. S. 557 ; 4 L. T. 340 ; 9 W. R. 579.

The 1 & 2 Vict. c. 85, was continued by 3 & 4 Vict. c. 111 ; and a shareholder in a joint stock banking company may be indicted for embezzling or stealing the money of the company, it being laid as the property of a public officer of the company correctly appointed and registered. *Reg. v. Atkinson*, 2 M. C. C. 278 ; Car. & M. 525.

Property of Company.]—An indictment charged the prisoners with stealing brass, the property of H. The evidence was that the brass was the property of a trading company, and that it was seen on the company's premises about twelve days before it was missed on the 24th March, 1877 ; that the company was being wound up ; and that H. was the official liquidator. A copy of the London Gazette, dated 19th May, 1877, was produced, which stated that at a special meeting of the company duly convened, and at a subsequent special general meeting (April 25th), a resolution was passed for winding-up the com-

pany voluntarily, and that H. and S. were appointed liquidators at the special general meeting :—Held, that this evidence did not prove that the brass was the property of H. as laid in the indictment. *Reg. v. Bell and Jordan*, 36 L. T. 670.

In order to satisfy the allegation in an indictment laying the property in a company limited, it is not necessary to prove the incorporation of the company by the certificate of incorporation, but it is sufficient to shew that the company acted and carried on business in fact as such company. *Reg. v. Langton*, 2 Q. B. D. 296 ; 13 Cox, C. C. 345 ; 46 L. J., M. C. 136 ; 35 L. T. 527.

Father or Son.]—An indictment for stealing the wearing apparel of a son, who is an apprentice to his father, and furnished with his clothes in pursuance of his indentures, should lay them to be the property of the son, and not of the father. *Rea v. Forsgate*, 1 Leach, C. C. 463.

If a father buys and pays for cloth which is made into trousers for his son, who is seventeen years of age, these trousers may, on an indictment for larceny, be laid as the property of the father. *Reg. v. Hughes*, Car. & M. 593.

In such cases the property may be laid either in the father or in the son, but the better course is to lay it in the latter. *Ib.*

A. was a boy of fourteen years of age, living with and assisting B., who was his father. The prisoner was indicted for stealing a pair of boots the property of A. The boots were the property of B., but at the time they were stolen by the prisoner, A. had temporarily, in his father's absence, the charge of the stall from which they were stolen :—Held, that A. was not a bailee, and that the ownership of the boots could not properly be laid in him. *Reg. v. Green*, Dears. & B. 113 ; 7 Cox, C. C. 186 ; 26 L. J., M. C. 17 ; 2 Jur., N. S. 1146.

Goods under Execution.]—If goods seized under a fi. fa. are stolen, they may be described as the goods of the party against whom the writ issued ; for though they are in custodia legis, the original owner continues to have a property in them until they are sold. *Rea v. Eastall*, 2 Russ. C. & M. 291, 382.

Peers and Peeresses.]—In an indictment for larceny of goods, the property of a peer who is a baron, the goods may be laid as the goods and chattels of "G., T. R., Lord D.," without styling him Baron D., although the more proper way to describe the peer is by his christian name, and his degree in the peerage, as duke, earl, baron, or the like. *Reg. v. Pitts*, 8 C. & P. 771 ; *S. P.*, *Reg. v. Caley*, 5 Jur. 709.

An indictment for larceny, laying the goods stolen to be the property of Victory Baroness Turkheim, is good, although her name is Selinda Victoire. *Rea v. Sells*, 2 Leach, C. C. 861.

Property of Industrial Co-operative Society.]—B. was charged with stealing money, alleged to be the money of A. A. had received the money as the servant of an industrial co-operative society, for goods sold to members of the society, and he was accountable to the treasurer for the moneys he had received. B. was a member of the society, and had abstracted some money from a till under A.'s charge :—Held, that there was a sufficient possession of the money in A. to sustain a conviction for larceny against

B. Reg. v. Burgess, L. & C. 299; 9 Cox, C. C. 302; 32 L. J., M. C. 185; 9 Jur., N. S. 582; 8 L. T. 255; 11 W. R. 602.

Trustees not incorporated.]—An indictment for the larceny of property belonging to trustees who are not incorporated, must lay the property to be in them by name as individuals, subjoining a description of the character in which they are authorized to act. *Reg. v. Sherrington*, 1 Leach, C. C. 513.

Property of Friendly Society.]—Where a friendly society had appointed a treasurer and two trustees, one of the trustees was held guilty of larceny in stealing the money of the society, the money being alleged in the indictment to be the property of the treasurer, and having been taken from his hands with the intention of stealing. *Reg. v. Cain*, 2 M. C. C. 204; Car. & M. 309.

A. was indicted for stealing money, the property of "F. and others." "F. and others" were trustees of a friendly society; and A. and H. were members of the society. H. was in possession of a shop where goods were sold for the society, and had the sole management, and was answerable for property and money coming into his possession. A., while assisting in the shop, without salary, took the money from the till. The prosecution failing to prove the society was duly inrolled, the indictment was amended by inserting H.'s name instead of "F. and others." It was then proved, on behalf of A., that the society was inrolled:—Held, that a conviction upon the amended indictment might be sustained. *Reg. v. Webster*, L. & C. 77; 9 Cox, C. C. 13; 31 L. J., M. C. 17; 7 Jur., N. S. 1208; 5 L. T. 327; 10 W. R. 20. *S. P.*, *Reg. v. Bramley*, R. & R. C. C. 478.

A., who was a trustee of a friendly society, was appointed by resolution of the society to receive money from the treasurer, and to carry it to the bank. He received the money from the treasurer's clerk, but instead of taking it to the bank, he applied it to his own purposes. He was indicted for stealing, the money being laid as that of the treasurer. The 18 & 19 Vict. c. 63, s. 18, vests the property of friendly societies in the trustees, and directs that in all indictments the property shall be laid in their names:—Held, that A. could not be convicted. *Reg. v. Loose*, Bell, C. C. 259; 8 Cox, C. C. 302; 29 L. J., M. C. 132; 6 Jur., N. S. 513; 2 L. T. 254; 8 W. R. 422.

Landlord or Benefit Society.]—A box belonging to a benefit society was stolen from a room in a public house. Two of the stewards had keys of this box; and, by the rules of the society, the landlord ought to have had a key, but in fact he had not:—Held, that the prisoner might be convicted on a count laying the property in the landlord alone. *Reg. v. Wymer*, 4 C. & P. 391.

Goods in Dissenting Chapel.]—The goods in a dissenting chapel, vested in trustees, cannot be described in an indictment as the goods of a servant who has merely the custody of the chapel and things in it, to clean and keep in order, although he has the key of the chapel, and no other person but the minister has another key. *Reg. v. Hutchinson*, R. & R. C. C. 412.

A Bible had been given to a society of Wesleyans; and it had been bound at the expense of the society. B. stated that he was one of the trustees of the chapel, and also a member of the society. No trust-deed was produced:—Held, that, in an indictment for stealing the Bible, the property was rightly laid in B. and others. *Reg. v. Boulton*, 5 C. & P. 537.

On Death of Parties—Laid in the Ordinary.]—In an indictment for stealing property which has belonged to a deceased person, who appointed executors, who would not prove the will, the property must be laid in the ordinary, and not in a person who, after the commission of the offence, but before the indictment, has taken out letters of administration with the will annexed; because the rights of an administrator only commence from the date of the letters, as distinguished from those of an executor, which commence, not from the granting of the probate, but from the death of the testator. *Reg. v. Smith*, 7 C. & P. 147.

A knife was stolen from the pocket of A., as his dead body lay in a road at S., in the diocese of W. The last place of abode of A. was at T., in the diocese of G.; but A.'s father stated that he believed his son had left T. to come to live with him, but did not know whether his son had given up his lodgings at T.:—Held, that this was sufficient proof to support a count for larceny, laying the property in the Lord Bishop of W. *Reg. v. Tippin*, Car. & M. 545.

A. was convicted upon an indictment charging her with stealing numerous articles, laid as the property of the ordinary. The evidence was, that the articles, which belonged to a deceased person, were after her death found in A.'s possession; that search had been made for a will, and none found; and that a small portion only of the articles had been seen in the house of the deceased after her death:—Held, that the property was rightly laid in the ordinary, and that the sessions had done right in leaving the case, as to the whole of the articles, to the jury, and in refusing to put the prosecutor to an election to proceed only in respect of the taking any particular articles. *Reg. v. Johnson*, Dears. & B. C. C. 340; 7 Cox, C. C. 379; 27 L. J., M. C. 52; 4 Jur., N. S. 55.

Joint Owners or Partners.]—Where two had jointly stock upon a farm, and one died, leaving several children:—Held, that the property in sheep stolen was properly alleged to be in the survivor and the children; the former swearing that he considered himself to hold one moiety for the benefit of the latter. *Reg. v. Scott*, 2 East, P. C. 655; R. & R. C. C. 13.

D. and C. were partners; C. died intestate, leaving a widow and children; from the time of his death the widow acted as partner with D., and attended the business of the shop; three weeks after C.'s death part of the goods were stolen; they were described in the indictment as the goods of D. and the widow:—Held, that the description was right. *Reg. v. Gaby*, R. & R. C. C. 178.

Sufficient Evidence of Possession.]—On an indictment for stealing sheep, which had been stolen after the death of the late owner, there being no formal proof of a will or an administration, but it appearing that the sheep

were in charge of the shepherd, under the orders of a steward, who was under the order of the prosecutors, and took directions from and rendered accounts to them:—Held, that there was sufficient evidence of a possession in them, which would sustain the indictment. *Reg. v. King*, 4 F. & F. 493.

On Conviction of Felons.]—Goods of an adjudged felon, stolen from his house, in the possession and occupation of his wife, may be described in an indictment for larceny as the goods of the Queen. But the house cannot be so described without office found. *Reg. v. Whitehead*, 2 M. C. C. 181; *S. P.*, *Coombes v. Queen's Proctor*, 16 Jur. 820.

Amendment of.]—Where stolen property has been laid in the wrong person, the indictment may be amended. *Reg. v. Fullarton*, 6 Cox, C. C. 194. *S. P.*, *Reg. v. Pritchard*, 8 Cox, C. C. 461; *L. & C. 34*; 30 L. J., M. C. 169; 7 Jur., N. S. 557; 4 L. T. 340; 9 W. R. 579. Contra, *Reg. v. Ward*, 7 Cox, C. C. 421.

Proof of Ownership.]—In support of an indictment for stealing oysters in a tidal river, it is sufficient to prove ownership by oral evidence, as, e.g., that the prosecutor and his father for forty-five years since 1815, had exercised the exclusive right of oyster-fishing in the locus in quo, and that in 1846 an action had been brought to try the right, and the verdict given in favour of the prosecutor. *Reg. v. Downing*, 23 L. T. 398.

Prisoner was charged with stealing a mare, the property of E. The evidence was that the prosecutor, in presence of the prisoner, agreed to buy of W. a mare for 5*l.*, and that W. assented to take a cheque for the 5*l.* The prosecutor afterwards sent the prisoner to W. with the cheque, and directions to take the mare to Bramshot Farm. On the next day the prisoner sold a mare to S., which he said he had bought for 5*l.* Before the magistrate he said he sold the mare to S., with the intention of giving the money to E., but that he got drunk:—Held, that that was sufficient evidence on which a jury might find that the mare sold to S. was the property of E. *Reg. v. King*, 12 Cox, C. C. 134; 25 L. T. 851.

W. let a horse on hire for a week to C., who fetched the horse every morning from W.'s stable, and returned it after the day's work was done. The prisoner went to C. one day, just as the day's work was done, and fraudulently obtained it from him by saying falsely, "I have come for W.'s horse; he has got a job on, and wants it as quickly as possible." The same evening the prisoner was found three miles off with the horse by a constable, to whom he stated that it was his father's horse, and that he was sent to sell it:—Held, that he was rightly convicted of larceny on an indictment alleging the property of the horse to be in W. *Reg. v. Kendall*, 12 Cox, C. C. 598; 30 L. T. 345.

— Possession of Agent—Charge of Stealing from Agent as Principal.]—The prisoner was tried upon an indictment which charged, that whilst the servant of A. he stole money belonging to A. The evidence was, that the prisoner was the servant of B., and that the money belonged to B., but was in the possession of A. as the agent of B. He was accordingly con-

victed of simple larceny:—Held, that the conviction was right. *Reg. v. Jennings*, Dears. & B. C. C. 447; 7 Cox, C. C. 397; 4 Jur., N. S. 146.

6. TRIAL.

a. Jurisdiction to Try.

Venue.]—By 24 & 25 Vict. c. 96, s. 114, *if any person shall have in his possession in any one part of the United Kingdom any chattel, money, valuable security or other property whatsoever, which he shall have stolen or otherwise feloniously taken in any other part of the United Kingdom, he may be dealt with, indicted, tried and punished for larceny or theft in that part of the United Kingdom where he shall so have such property, in the same manner as if he had actually stolen or taken it in that part; and if any person in any one part of the United Kingdom shall receive or have any chattel, money, valuable security or other property whatsoever which shall have been stolen or otherwise feloniously taken in any other part of the United Kingdom, such person knowing such property to have been stolen or otherwise feloniously taken, he may be dealt with, indicted, tried and punished for such offence in that part of the United Kingdom where he shall so receive or have such property, in the same manner as if it had been originally stolen or taken in that part.* (Former provision, 7 & 8 Geo. 4, c. 29, s. 76.)

Parish Partly in Two Counties.]—If a parish is partly situate in the county of W., and partly in the county of S., it is sufficient, in an indictment for larceny, to state the offence to have been committed at the parish of H., in the county of W. *Re v. Perkins*, 4 C. & P. 363.

Goods Carried into another County.]—Larceny must be tried in the county where committed; but the offence is considered as committed in every county into which the thief carries the goods. *Re v. Thomson*, 2 Russ. C. & M. 328.

If a man steals goods in one county, and carries them into another, it will be larceny in the latter, though the goods are not carried into the latter county until long after the original theft. *Re v. Parkin*, 1 M. C. C. 45.

A wife took her husband's goods from Nottingham, and she was found committing adultery with the prisoner at Liverpool, the husband's goods being then in the prisoner's possession. There was no evidence that they were under his control at any place within the jurisdiction of the Central Criminal Court:—Held, that that court had no jurisdiction to try the prisoner for the offence. *Reg. v. Prince*, 11 Cox, C. C. 145.

Indictment for stealing two horses in Kent; the only evidence of stealing in Kent was that the constable having taken the prisoner in Surrey, and the prisoner having offered on some pretence to go to a place in Kent, the constable and the prisoner rode the horses there, and the prisoner escaped, leaving the horses with the constable:—Held, not sufficient. *Re v. Simmons*, 1 M. C. C. 408.

The prisoner stole a watch at Liverpool, and sent it by railway to a confederate in London:—Held, that the constructive possession still remained in the prisoner, and that he was triable at the Middlesex sessions. *Reg. v. Rogers*, 1

L. R., C. C. 136; 37 L. J., M. C. 83; 18 L. T. 414; 16 W. R. 733; 11 Cox, C. C. 38.

If a man kills a sheep in county A., and carries the carcase into county B., he may be convicted upon an indictment for stealing, taking and driving away sheep into county B. If a man kills a sheep in county A., and carries the carcase into county B., he cannot be convicted of killing the sheep with intent to steal the carcase in county B. *Reg. v. Newland*, 2 Cox, C. C. 283.

Goods Stolen Abroad and brought to England.]

—A person had stolen goods in Guernsey and brought them to England, where he was taken and committed for trial:—Held, that, Guernsey not being a part of the United Kingdom, he could not be convicted of larceny, for having them in his possession here, nor of receiving in England the goods so stolen in Guernsey. *Reg. v. Dobruich*, 11 Cox, C. C. 207.

If a larceny is committed out of the kingdom, though within the king's dominions (e. g. in Jersey), bringing the things stolen into this kingdom, will not make it larceny here. *Re v. Prowes*, 1 M. C. C. 349; *S. P.*, *Reg. v. Madge*, 9 C. & P. 29.

Within Admiralty Jurisdiction.]—By 24 & 25 Vict. c. 96, s. 115, *all indictable offences mentioned in the act which shall be committed within the jurisdiction of the Admiralty of England or Ireland shall be deemed to be offences of the same nature, and liable to the same punishments, as if they had been committed upon the land in England or Ireland, and may be dealt with, inquired of, tried and determined in any county or place in which the offender shall be apprehended or be in custody; and in any indictment for any such offence, or for being an accessory to any such offence, the venue in the margin shall be the same as if the offence had been committed in such county or place, and the offence itself shall be averred to have been committed "on the high seas;" provided that nothing herein contained shall alter or affect any of the laws relating to the government of her Majesty's land or naval forces.*

The court of quarter sessions has jurisdiction to try cases of larceny committed on the high seas where the offender is apprehended within the jurisdiction of such court. *Reg. v. Peel*, L. & C. C. C. 231; 9 Cox, C. C. 220; 32 L. J., M. C. 65; 8 Jur., N. S. 1185; 7 L. T. 336; 11 W. R. 40.

See further *infra*, C. PRACTICE (*Jurisdiction.*)

b. Practice.

Election of Larcenies Charged.]—By 24 & 25 Vict. c. 96, s. 6, *if upon the trial of any indictment for larceny it shall appear that the property alleged in such indictment to have been stolen at one time was taken at different times, the prosecutor shall not by reason thereof be required to elect upon which taking he will proceed, unless it shall appear that there were more than three takings, or that more than the space of six months elapsed between the first and the last of such takings; and in either of such last-mentioned cases the prosecutor shall be required to elect to proceed for such number of takings, not exceeding three, as appear to have taken place within the period of six months from the*

first to the last of such takings. (Similar to former provision, 14 & 15 Vict. c. 100, s. 17.)

A. was charged and convicted of stealing various articles. The evidence was that the articles had belonged to a deceased person and after her death were found in A.'s possession:—Held, that the sessions had done right in leaving the case as to the whole of the articles to the jury, and in refusing to put the prosecutor to an election to proceed only in respect of the taking any particular articles. *Reg. v. Johnson*, Dears. & B. C. C. 340; 7 Cox, C. C. 379; 27 L. J., M. C. 52; 4 Jur., N. S. 55.

On an indictment for stealing fowls, in a first count laid on the 15th February, for stealing ten fowls, and in the third count laid on the 13th February in the same year, for stealing three fowls, the prosecutor was put to elect between the two occasions. *Reg. v. Lonsdale*, 4 F. & F. 56.

A. was tried upon an indictment which contained two counts, the first for embezzlement, and the second for larceny as a bailee. At the close of the case for the prosecution, it was objected that the indictment was bad for misjoinder of counts, and that the counsel for the prosecution could not be allowed to elect upon which count he would proceed. The objection was overruled. The counsel for the prosecution elected to proceed upon the second count, and A. was convicted:—Held, the conviction was right. *Reg. v. Holman*, 9 Cox, C. C. 201; L. & C. 177; 8 Jur., N. S. 1082; 6 L. T. 474; 10 W. R. 718.

An indictment charged an assistant to a photographer with stealing divers articles belonging to his employer. It did not appear when the articles were taken, whether at one time or more times, but only that one particular article could not have been taken before a given month:—Held, that this was not a case in which the prosecutor should be put to elect upon which articles to proceed under 24 & 25 Vict. c. 96, s. 6. *Reg. v. Hanwood*, 22 L. T. 486.

A person stole gas for the use of a manufactory by means of a pipe, which drew off the gas from the main without allowing it to pass through the meter. The gas from this pipe was burnt every day, and turned off at night. The pipe was never closed at its junction with the main, and consequently always remained full of gas:—Held, that as the pipe always remained full, there was, in fact, a continuous taking of the gas, and not a series of separate takings. *Reg. v. Firth*, 1 L. R., C. C. 172; 38 L. J., M. C. 54; 19 L. T. 746; 17 W. R. 327; 11 Cox, C. C. 234.

Held, also, that, even if the pipe had not been thus kept full, the taking would have been continuous, as it was substantially all one transaction. *Id.*

Before this Enactment.]—Two persons indicted for horse-stealing in county A., were found in joint possession of two horses in that county, which they had jointly taken at different times and places in county B.:—Held, that as each taking in county B. was a separate felony, the prosecutor's counsel must elect on which to proceed. *Re v. Smith*, R. & M. 295.

Whether Jury must find Specific Amount Stolen on Particular Day.]—The prisoner was employed to conduct an office in connexion with a branch bank. His salary included his services

and the providing an office, which was in his own house, where he carried on another business. The office was fitted up at the expense of the bank, and in it there was an iron safe, the property of the bank, into which it was his duty, when night came, to put any money received during the day which had not been required. The manager of the branch bank kept a duplicate key of this safe. It was the prisoner's duty to receive money from customers, to be put to their accounts with the branch bank, and to pay cheques. He furnished accounts to the manager, and it was his duty to pay over weekly to the manager the excess not required at the office. He also received moneys from the branch as required, which were entered in his weekly accounts. In September, 1855, his accounts were audited, and his cash found correct; and from that time up to September, 1857, he continued to furnish weekly accounts which were correct in their statements of receipts and payments, but no examination of the balances appearing from those accounts to be in his hands took place. At the latter date, however, he was about 3,000*l.* short in his accounts, and admitted that he had taken that amount. The jury found the prisoner guilty of larceny as a clerk, in having stolen some money received from customers, which before such stealing had been placed in the safe, and made the subject of a weekly account:—Held, that it was not necessary that the jury should find any specific amount to have been stolen on any particular day. *Reg. v. Wright*, Dears. & B. C. C. 431; 7 Cox, C. C. 413; 27 L. J., M. C. 65; 4 Jur., N. S. 313.

Prisoner may be found Guilty of Embezzlement though Indicted for Larceny.]—*See ante*, EMBEZZLEMENT.

c. Evidence.

Competent Witness — Wife of Prisoner previously Convicted.]—A. being tried for sheep stealing, it was proposed to call the wife of B. to prove that A. and B. had jointly stolen the sheep, B. having been convicted of it at the previous quarter sessions:—Held, that she was a competent witness. *Reg. v. Williams*, 8 C. & P. 284.

Statement of Prisoner.]—A statement made by a prisoner before suspicion attaches to him, and before search made, in order to account for his possession of property, which he is afterwards charged with having stolen, is admissible as evidence for him. *Reg. v. Abraham*, 2 C. & K. 550.

— **Duty of Prosecution to Rebut.]**—Where a prisoner charged with larceny has given two different accounts of the way in which he became possessed of the stolen property, it is not incumbent on the prosecutor to call as witnesses persons whom, in one of the statements, he says could prove his innocence, with a view of disproving that statement, but it may be prudent in the prosecutor to have these persons in attendance at the trial, though he does not call them, to avoid the effect of the observations by the prisoner or his counsel that these persons could prove the prisoner's innocence, but that he has not the means of procuring their attendance. *Reg. v. Dibley*, 2 C. & K. 818.

Of other Cases.]—Neither upon an indictment for stealing nor receiving can evidence be given that the prisoner had at the time, or previously, other stolen goods in his possession. *Reg. v. Oddy*, T. & M. 593; 2 Den. C. C. 264; 5 Cox, C. C. 210; 20 L. J., M. C. 108; 15 Jur. 517.

A prisoner was indicted for stealing three articles. Having taken the first article, he returned in about two minutes and took the second, and then returned in half an hour and took the third:—Held, that, the last taking was a distinct felony, and could not be given in evidence with the other two; but, that the interval of time between the first and second taking was so short, that they must be considered as parts of the same transaction. *Reed v. Birdseye*, 4 C. & P. 386.

See also cases, post, C. PROCEDURE AND PRACTICE (Evidence).

No Proof of Want of Authority.]—A. went to the shop of B., and asked for shawls for Mrs. D. to look at; B. gave her five; she pawned two, and three were found at her lodgings. Mrs. D. was not called as a witness:—Held, that A. could not be convicted of a larceny in stealing the goods of B. *Reed v. Savage*, 5 C. & P. 143.

Sufficiency to support Conviction.]—W. was indicted for larceny for stealing six pounds of brass from a foundry. The only suggested evidence offered at the trial was, that the prisoner, who was employed upon the premises, had been seen to come into the place where the brass was kept:—Held, that there was not a scintilla of evidence to go to the jury. *Reg. v. Walker*, Dears. C. C. 280.

A. had agisted his horse with B., and in consequence of hearing of the loss of it, A. went to the field of B., where it was not:—Held, to be not sufficient proof of loss to support an indictment for horse-stealing. *Reed v. Yend*, 6 C. & P. 176.

A servant a day or two before her mistress's death got cashed a cheque drawn to her mistress's order, and which had come to her mistress's house in a letter, and when cashed purported to bear her mistress's indorsement; and after cashing it she applied the greater part of it to a purpose which probably was directed by her mistress, but had retained a small surplus, and when taxed with it, just after her mistress's death, she denied the receipt of the cheque, the indorsement of which was believed not to be that of her mistress. The jury was directed that there was no evidence on which they could properly convict her for stealing the cheque, even if there was any on which they could have convicted for embezzling the surplus. *Reg. v. Slingsby*, 4 F. & F. 61.

A banker's clerk was employed at A. to manage a branch for them at the town of B. He provided an office for the bank in his own house. The office was furnished by the bankers, and an iron safe was provided there by them. There were duplicate keys, the bankers kept one and the clerk the other key. It was his duty to receive money from customers of the bank, to place it at night in the safe, to pay away from time to time such portions of it as were required for the business of the bank, to pay cheques, to pay over weekly any balance not required for the business at B., and to send in weekly accounts to the bankers at A. He carried on the business, receiving and paying money and

sending in weekly accounts. In auditing his accounts a deficiency of 3,000*l.* was discovered. He admitted that he had taken that amount of the money. There was no other evidence, except that in the day-time money was sometimes kept in a drawer in the office. The jury found him guilty of larceny as a clerk in having stolen some money received from customers which, before such stealing, had been placed in the safe, and made the subject of a weekly account:—Held, that there was evidence to go to the jury of larceny. *Reg. v. Wright*, Dears. & B. C. C. 431; 7 Cox, C. C. 413; 27 L. J., M. C. 65; 4 Jur., N. S. 313.

The prisoner was the bailor, and the prosecutor the bailee of a horse. The prisoner had entrusted the horse to the prosecutor as security for a bill drawn by the former and accepted by the latter, to accommodate him. The prisoner took the horse out of the prosecutor's possession. The bill had been paid by the prosecutor, who had never been repaid by the prisoner, but was not produced at the trial:—Held, that in the absence of the bill there was no evidence to shew that the prisoner had ever parted with his property in the horse, so as to constitute his taking of it a larceny. *Reg. v. Wadsworth*, 10 Cox, C. C. 557.

When Prosecutor cannot say that any Goods Lost.—A man was found with dead fowls in his possession, of which he could give no account, and was tracked to a fowl-house where a number of fowls was kept, and on the floor of which were some feathers corresponding to the feathers of one of the fowls found on the prisoner, from the neck of which feathers had been removed. The fowl-house, which was closed over night, was found open in the morning. The spot where he was found was 1,200 yards from the fowl-house, and the prosecutor, not knowing the number of fowls kept, could not swear that he had lost any:—Held, that there was evidence to support a conviction for larceny. *Reg. v. Mockford*, 11 Cox, C. C. 16; 17 L. T. 582; 16 W. R. 375.

The prisoner was found coming out of a warehouse, where a large quantity of pepper was kept, with pepper of a similar quality in his possession. He had no right to be in the warehouse, and on being discovered said, "I hope you will not be hard with me," and took some pepper out of his pocket and threw it upon the ground. There was no evidence of any pepper having been missed from the bulk:—Held, that there was sufficient evidence to go to the jury of the *corpus delicti*. *Reg. v. Burton*, Dears. C. C. 282; 6 Cox, C. C. 293; 23 L. J., M. C. 52; 18 Jur. 157.

Though no portion of the prosecutor's goods has been missed, it is a question for the jury, under all the circumstances of the case, whether the goods, which are the subject of the indictment, are his property. *Reg. v. Hooper*, 1 F. & F. 85.

Proof of Writing—No Notice to Produce.—On an indictment against A. and B., for burglary, one of the articles stolen (the only one directly proved to have been in the possession of either of them) being a ring, which was described particularly by the prosecutor, and proved to have had an inscription upon it, and to have been just like one he produced; and one of the prisoners being proved to have shewn, soon after the burglary, a ring which was proved to have

been just like that produced, and to have had an inscription upon it, but no notice to produce which had been given:—Held, that the contents of the inscription on the prosecutor's ring could not be proved, and that, as there had been no notice given to the prisoner to produce the ring shewn by him to the witness, the contents of the inscription upon it could not be proved. *Reg. v. Farr*, 4 F. & F. 396.

— **After proof of Subpœna.**—On an indictment for the larceny of a bill of exchange obtained from the prosecutor, under a pretence of discounting it, parol evidence of the bill may be given after proof of a subpœna *duces tecum* given to the person in whose possession it was shewn to be previously to the trial, but who did not attend. *Reg. v. Aichles*, 1 Leach, C. C. 294; 2 East, P. C. 675.

d. Recent Possession of Stolen Property.

What Considerations Affect.—The question of what is or is not a recent possession of stolen property, is to be considered with reference to the nature of the article stolen. Therefore, where two ends of woollen cloth in an unfinished state, consisting of about 20 yards each, are lost, and were in the possession of the prisoner two months after their being stolen, and still in the same state, it was held that this was a possession sufficiently recent to call on the prisoner to shew how he came by the property. *Reg. v. Partridge*, 7 C. & P. 551.

Where a stolen horse was found in the possession of the prisoner six months after it was stolen, and there was no other evidence against him, the judge would not call on him for his defence, as the possession was not sufficiently recent. *Reg. v. Cooper*, 3 C. & K. 318; 16 Jur. 750. *S. P., Reg. v. Adams*, 3 C. & P. 600; *Reg. v. Cruttenden*, 6 Jur. 267.

A. was indicted for stealing and receiving articles of dress. It was proved that the prosecutor's house was broken open and the articles stolen, on the 2nd November. On the night of the 4th November A. sold them openly at a public-house. He was subsequently apprehended, and then told the constable that C. and D. brought the goods to his house, and that the woman who kept it (Mrs. W.) would say so, and that being on the spree, he sold them and spent the money. C. and D. were thereupon apprehended. C. was convicted of stealing articles taken at the same time from the prosecutor's house, and D. was discharged. The constable went to the woman W., and made inquiries as to A.'s statement. No evidence as to the result of such inquiry was received. Neither C., D., nor W. was called by the prosecution to contradict A.'s statement, and he was convicted of stealing:—Held, that as there was some evidence upon which the jury might convict, the conviction must be affirmed. *Reg. v. Wilson*, Dears. & B. C. C. 157; 26 L. J., M. C. 45; 3 Jur., N. S. 167.

Possession by a letter-carrier of a bank-note some months after it has been sent by post and lost, is not sufficient evidence of a felonious stealing by him, though not accounted for otherwise than by his mere assertion that he had found it. *Reg. v. Smith*, 3 F. & F. 123.

A prisoner was tried on the 29th of June, 1863, upon an indictment which charged him in the

first count with having on the 20th of September, 1862, stolen certain property of A., and in the second count with having on the 16th of January, 1863, stolen five shovels, also the property of A. The prisoner had been in A.'s employ several years, and the property charged in the indictment was found in his possession on the 21st of January, 1863, but there was no evidence to shew when they were stolen:—Held, that he was not entitled to be acquitted on the ground that the stolen property was not proved to have been in his possession recently after it was stolen. *Reg. v. Knight*, L. & C. 378; 9 Cox, C. C. 437; 9 L. T. 808.

Where property of insignificant value is traced to the possession of the prisoner fifteen months after the loss, and he gives an account of his possession of it which is not inconsistent with the right of the prosecutor to it, he ought not to be called on to account for that possession in a court of justice. Where, however, the prisoner, when lost property is found in his possession, and identified by the prosecutor after so long an interval, claims it as his own property by right of purchase made before the alleged theft, and a continuous possession up to the time of discovery, he may be called on to account for that possession, notwithstanding the interval which has elapsed between the loss and discovery, for then he disputes the identity of the thing found with that loss. *Reg. v. Evans*, 2 Cox, C. C. 270.

A prisoner was indicted for sheep-stealing. The prosecutor lost a sheep in September; it was found in the prosecutor's possession in the March following. There was no other evidence of larceny than the possession:—Held, that the period between the loss and the finding was too long to permit the case to go to the jury. *Reg. v. Harris*, 8 Cox, C. C. 333.

Evidence of Receiving Property, knowing it to have been Stolen.—Recent possession of stolen property is evidence, either that the person in possession stole the property, or that he received it knowing it to have been stolen, according to the other circumstances of the case. *Reg. v. Langmead*, L. & C. 427; 9 Cox, C. C. 464; 10 L. T. 350.

Duty of Prosecution to Disprove.—Where a person on whom stolen property is found gives to those who find him in possession of it a reasonable account of how he came by it, it is incumbent on the prosecutor, on the trial, to shew that that account is untrue. *Reg. v. Crowhurst*, 1 C. & K. 370. *S. P., Reg. v. Smith*, 2 C. & K. 207.

Aliter, if that account is unreasonable or improbable on the face of it. *Id.*

On a charge of burglary, possession by the prisoner of part of the stolen property very soon after the burglary, with an account given of it not reasonable or credible, is sufficient *prima facie* evidence, without express evidence to falsify it. It is so however only if, upon all the circumstances in the case, the account given is not reasonably credible. *Reg. v. Ewell*, 4 F. & F. 922.

Where stolen property is traced to the possession of a prisoner, and he at the time gives an account of how he became possessed of it, it is not the duty of the prosecution to disprove that account where circumstances exist in the case which render that account unreasonable, or its

truth improbable. In such a case the burthen of calling the parties vouched is cast on the prisoner. *Reg. v. Harmer*, 3 Cox, C. C. 487.

What sufficient Evidence of Recent Possession.—A bag was left by the owner on a Saturday night near to a place where the prisoner and two other persons were at the time. The prisoner passed by the place on his way home, and shortly afterwards one of the other persons followed in the same direction. That person and the prosecutor then met the prisoner coming back to his home from the opposite direction, and being questioned he denied all knowledge of the bag, and said that he had been into the neighbouring wood for firewood. The wood, the prisoner's cottage, and some disused farm buildings near it, were then searched, without success. On the Monday morning the bag was found in a hay-loft in one of the disused farm buildings near to the highway. There was no door to it, and passers-by had easy access to it. The prisoner was then taken into custody for stealing the bag, and said to the constable, after previously denying he had taken the bag, "I suppose I shall get a month for this," and made use of some other words of no more definite meaning. The chairman left all the facts to the jury as evidence from which they might infer that the prisoner had had possession of the bag, and directed them, if they found so, to treat the case as one of recent possession:—Held, that the chairman's ruling was wrong, and that he ought to have directed an acquittal. *Reg. v. Hughes*, 39 L. T. 292.

On the night following the commission of a burglary, two boys were found concealed in a corn-chest in an open gig-house with which they were not in any way connected, and half a mile from the house of the prosecutor. Outside the corn-chest was found some of the stolen property, and in the loft over the gig-house was found another portion of the stolen property:—Held, that there was no evidence to go to the jury of possession by the boys of any of the stolen articles. *Reg. v. Coots*, 2 Cox, C. C. 188.

e. Punishment.

(24 & 25 Vict. c. 96, ss. 7, 8, 9, 98, 99.)

7. RESTITUTION AND RECOVERY OF STOLEN PROPERTY.

Power to award Writs of Restitution.—By 24 & 25 Vict. c. 96, s. 100, if any person guilty of any such felony or misdemeanor as is mentioned in the act, in stealing, taking, obtaining, extorting, embezzling, converting or disposing of, or in knowingly receiving, any chattel, money, valuable security, or other property whatsoever, shall be indicted for such offence, by or on behalf of the owner of the property, or his executor or administrator, and convicted thereof, in such case the property shall be restored to the owner or his representative; and in every case in this section aforesaid, the court before whom any person shall be tried for any such felony or misdemeanor, shall have power to award, from time to time, writs of restitution for the said property, or to order the restitution thereof in a summary manner: provided that if it shall appear, before any award or order made, that

any valuable security shall have been *bonâ fide* paid or discharged by some person or body corporate liable to the payment thereof, or being a negotiable instrument, shall have been *bonâ fide* taken or received by transfer or delivery, by some person or body corporate for a just and valuable consideration, without any notice, or without any reasonable cause to suspect that the same had by any felony or misdemeanor been stolen, taken, obtained, extorted, embezzled, converted or disposed of, in such case the court shall not award or order the restitution of such security; provided also, that nothing in this section contained shall apply to the case of any prosecution of any trustee, banker, merchant, attorney, factor, broker, or other agent intrusted with the possession of goods, or documents of title to goods, for any misdemeanor against this act. (Former provision, 7 & 8 Geo. 4, c. 29, s. 57.)

Property must have been Stolen.]—On a conviction at the Central Criminal Court for stealing, the court has no jurisdiction to make an order directing the disposal of property found in the possession of the felon when he was apprehended, which was not part of that stolen. *Reg. v. London (Corporation)*, 27 L. J., M. C. 231; 4 Jur., N. S. 1078.

To what Cases applicable.]—The 21 Hen. 8, c. 11, which restored goods to a prosecutor on conviction of the person who took them away, extended only to a felonious and not to a fraudulent taking. *Rev. v. De Veaux*, 2 Leach, C. C. 585; 2 East, P. C. 789, 839.

The 24 & 25 Vict. c. 96, s. 100, applies to cases of false pretences as well as felony, and the fact that the prisoner parted with the goods to a *bonâ fide* pawnee will not disentitle the original owner to the restitution of the goods. *Reg. v. Stancliffe*, 11 Cox, C. C. 318.

The court is bound by the statute to order restitution of property obtained by false pretences, and the subject of the prosecution, in whose hands soever it is found. *Reg. v. Goldsmith*, 12 Cox, C. C. 594.

So, likewise, of property received by a person knowing it to have been stolen or obtained by false pretences. *Ib.*

But the order is strictly limited to property identified at the trial as being the subject of the charge. *Ib.*

It does not, therefore, extend to property in the possession of innocent third persons, which was not produced and identified at the trial as being the subject of the indictment. *Ib.*

An order of restitution of property stolen will extend only to such property as is produced and identified in the course of the trial, and not to all the articles named in the indictment, unless so produced and identified, and in the possession of the court. *Reg. v. Smith*, 12 Cox, C. C. 597.

S. 100 of the Larceny Act, 1861, enacts that any property dishonestly acquired shall be restored to the owner upon conviction of the offender, and in every case the court before which the conviction takes place shall have power to order restitution in a summary manner, provided that in case of a *bonâ fide* transfer of a negotiable instrument for value, and without notice or reasonable cause to suspect, the court shall not award or order the restitution of such security. The defendants had *bonâ fide* and

without cause to suspect acquired the possession for value of a New Zealand bond for 1,000*l.*, which had been stolen from the plaintiff's possession, after the conviction of a person for feloniously receiving the same:—Held, that the proviso in the above section applies to the right to recover as well as to the summary restitution of a negotiable instrument, and that, under the circumstances, the owner of the bond could not recover it from the transferees. *Chichester v. Hill*, 15 Cox, C. C. 258; 52 L. J., Q. B. 160; 48 L. T. 364; 31 W. R. 245; 47 J. P. 324.

See also next sub-head.

Stolen Horses.]—The provisions of 31 Eliz. c. 12, extend to the sale as well of horses which are not stolen as of those which are stolen; and the sale of a horse in market overt without complying with the requirements of this statute has merely the effect of a sale out of market overt. *Moran v. Pitt*, 42 L. J., Q. B. 47; 28 L. T. 554; 21 W. R. 525.

A magistrate has no power, under 31 Eliz. c. 12, to cause a stolen horse to be re-delivered to the owner, unless proof of the actual theft is first given. *Josephs v. Atkins*, 2 Stark. 76.

A complaint having been made to a magistrate by the owner, that his horse had been stolen by B.; an officer, although armed with a warrant against B., is not justified, under the above statute, in taking the horse out of the possession of a *bonâ fide* purchaser from B. *Ib.*

Restitution to Owner.]—The postmaster-general is not entitled to have restored to him moneys found on the prisoner, part of the proceeds of the theft, the prisoner having pleaded guilty to an indictment for stealing a letter containing two bank notes, the property of the postmaster-general. *Reg. v. Jones*, 14 Cox, C. C. 528.

The court cannot, under the 7 & 8 Geo. 4, c. 29, s. 57, order a Bank of England note which has been paid and cancelled, to be delivered up to the prosecutor of an indictment against the party who stole it. *Rev. v. Stanton*, 7 C. & P. 431.

Counsel heard on behalf of Persons in Possession of Goods.]—Where a prisoner pleaded guilty to several indictments charging him with larceny, and an application was made on the part of the prosecutor for an order for restitution, the court consented to hear counsel on behalf of those who were in possession of the goods, and against whom the order, if made, would operate. *Reg. v. Machin*, 5 Cox, C. C. 216.

Common Order, when made.]—Where, under such circumstances, the depositions taken before the magistrate disclosed a clear case of felony, the court declined to order a writ of restitution to issue on the suggestion of the holders of the goods that the prisoner was an agent, and therefore that the fraudulent dealing with the goods on his part did not constitute a felony, but the court made the common order for restitution. *Ib.*

Jurisdiction to award Writ of Restitution.]—The jurisdiction of the Court of Queen's Bench to issue a writ of restitution of stolen property was incidental to the judgment on appeals of felony which were abolished by 59 Geo. 3, c. 46,

and it was abolished with them. *Reg. v. London (Lord Mayor, &c.)*, 4 L. R., Q. B. 371; 17 W. R. 722; 10 B. & S. 341. *S. C.*, nom. *Walker v. London (Mayor, &c.)*, 11 Cox, C. C. 280; 38 L. J., M. C. 107; 20 L. T. 604.

That jurisdiction was not given by 21 Hen. 8, c. 11, nor is it given by 24 & 25 Vict. c. 96, s. 100. *Ib.*

A man was convicted of stealing cattle, which were sold by him on the following day in market overt, and were resold upon the same day, also in market overt, the purchases being bona fide:—Held, that the judge at the trial had jurisdiction to order the restitution of the cattle to the person from whose land the cattle had been stolen. *Reg. v. Horan*, 6 Ir. R., C. L. 293.

Attachment for Disobedience to.]—The order for restitution not being obeyed, a rule was obtained calling upon D. to shew cause why he should not be attached for contempt, and a cross rule was obtained calling upon the prosecutor to shew cause why the order of restitution should not be rescinded; the court made the rule absolute for an attachment. *Reg. v. Woollez, Hart, In re*, 8 Cox, C. C. 337.

Money found on Prisoner handed to Innocent Purchaser.]—By 30 & 31 Vict. c. 35, s. 9, *where any prisoner shall be convicted, either summarily or otherwise, of larceny or other offence, which includes the stealing of any property, and it shall appear to the court by the evidence that the prisoner has sold the stolen property to any person, and that such person has had no knowledge that the same was stolen, and that any moneys have been taken from the prisoner on his apprehension, it shall be lawful for the court, on the application of such purchaser, and on the restoration of the stolen property to the prosecutor, to order that, out of such moneys a sum not exceeding the amount of the proceeds of the sale be delivered to the purchaser.*

Award of Compensation to Prosecutor out of Forfeited Property.]—The Forfeiture for Felony Act, 1870 (33 & 34 Vict. c. 23), s. 4, which empowers the court to award any sum of money not exceeding 100l., by way of satisfaction or compensation for any loss of property suffered by the applicant through or by reason of felony, such sum to be "deemed a judgment debt to the person entitled to receive the same from the person so convicted," requires to be exercised with considerable caution, as being liable to abuse by arrangements in the nature of condonation of a felony. *Reg. v. Lovett*, 11 Cox, C. C. 602.

On an indictment of a servant for stealing money from his master, it had been arranged between the counsel for the prisoner and the prosecutor, that the prisoner should repay the money which he had stolen, and that the prosecutor should recommend that he be discharged without punishment, on his own recognizances to come up for judgment when called upon, and that the court should order that sum to be paid as compensation to the prosecutor. The prisoner having pleaded guilty to the charge, an application was made by counsel, stating the arrangement. But the court refused its assent to any compromise, as not being within the intention of the act, which contemplated compensation

to the party wronged, as an addition to, and not as a substitute for the punishment due to the crime. *Ib.*

Taking or Advertising Rewards for return of Stolen Property.]—By 24 & 25 Vict. c. 96, s. 101, *whosoever shall corruptly take any money or reward, directly or indirectly, under pretence or upon account of helping any person to any chattel, money, valuable security, or other property whatsoever, which shall, by any felony or misdemeanor, have been stolen, taken, obtained, extorted, embezzled, converted or disposed of, as in this act before mentioned, shall (unless he shall have used all due diligence to cause the offender to be brought to trial for the same) be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years with or without hard labour, and with or without solitary confinement; and, if a male under the age of eighteen years, with or without whipping. (Former provision, 7 & 8 Geo. 4, c. 29, s. 58.)*

It was an offence within 4 Geo. 1, c. 11, s. 4, to take money under pretence of giving a man to goods stolen from him, though the prisoner had no acquaintance with the felon, and did not pretend that he had, and though he had no power to apprehend the felon, and though the goods were never restored, and the prisoner had not power to restore them. *Re v. Leadbitter*, M. C. C. 76.

By s. 102, *whosoever shall publicly advertize a reward for the return of any property whatsoever, which shall have been stolen or lost, and shall in such advertisement use any words purporting that no questions will be asked, or shall make use of any words in any public advertisement purporting that a reward will be given or paid for any property which shall have been stolen or lost, without seizing or making any inquiry after the person producing such property, or shall promise or offer in any such public advertisement to return to any pawnbroker or other person who may have bought, or advanced money by way of loan upon, any property stolen or lost, the money so paid or advanced, or any other sum of money or reward for the return of such property, or shall print or publish any such advertisement, shall forfeit the sum of 50l. for every such offence, to any person who will sue for the same by action of debt, to be recovered with full costs of suit. (Similar to former provision, 7 & 8 Geo. 4, c. 29, s. 59.)*

On an indictment against A., for corruptly and feloniously receiving from B. money under pretence of helping B. to recover goods before then stolen from B., and for not causing the thieves to be apprehended, three questions were left to the jury: First, did A. mean to screen the guilty parties, or to share the money with them? Second, did A. know the thieves, and intend to assist them in getting rid of the property, by promising B. to buy it? Third, did A. know the thieves, and assist B., as her agent, and at her request, in endeavouring to purchase the stolen property from them, not meaning to bring the thieves to justice? The jury answered the first question in the negative, and the third in the affirmative:—Held, that the receipt of the money,

under the circumstances, was a corrupt receiving of the money by *A. Reg. v. Pascoe*, 4 New Sess. Cas. 66; 2 C. & K. 927; 1 Den. C. C. 456; T. & M. 141; 18 L. J., M. C. 186; 13 Jur. 544.

8. EFFECT OF LARCENY ON OWNERSHIP OF PROPERTY.

Theft of Bond Payable to Bearer—Bonâ fide Holder of Value—Banker's Charge.—A bank advanced moneys to a customer upon promissory notes, on the back of each of which he placed an indorsement by which he charged all his property, shares, or securities, which then were or which might be, at any time prior to the payment of the note, "in the possession or power of the holder thereof for the time being," with the payment of the promissory note, and interest. After several such transactions had taken place, the customer obtained an advance upon a French bond, payable to bearer and transferable by delivery, and he subsequently handed the bank another French bond, and requested that both might be sold on his account. On the latter occasion he obtained no advance of money. On the bonds being sent to the bank's brokers for sale it was discovered for the first time that both had been stolen:—Held, that as to the first bond, the bank had a charge upon it, since an advance had been obtained upon it, but that as to the second bond, there was no such charge, since no advance having been made upon it, there could be no charge otherwise than by virtue of the charge endorsed upon the promissory note, which did not apply to the case, because it could only apply to property of the drawer of the note placed in the possession or power of the holder for a purpose not inconsistent with an assertion of such a charge, and the bond in question was not so situated. *Symons v. Mulken*, 46 L. T. 763; 30 W. R. 875.

Property Revesting in Owner on Conviction.—By 7 & 8 Geo. 4, c. 29, s. 57, the property in a stolen chattel reverts in the owner on the conviction of the thief, and the owner may maintain trover for it, though there has been no order for restitution. *Scattergood v. Sylvester*, 15 Q. B. 506.

— **Title Acquired before Conviction.**—A. and B. were convicted of stealing the goods of C.; D., before they were convicted, acquired a title to the goods by making an advance of money, bonâ fide, to A., who was the servant and agent of C., and established his title to the goods in trover brought against him for their recovery by C.:—Held, that, notwithstanding the title had been acquired under 5 & 6 Vict. c. 39, by D., the goods on the conviction of A. and B. reverted in C., and the court ordered them to be restored. *Reg. v. Wollez, Hart, In re*, 8 Cox, C. C. 337.

If a person is stopped with a horse under suspicious circumstances, and the horse is placed at an inn by the police, the innkeeper has no lien on the horse for his keep, and if an auctioneer, by the direction of the innkeeper, sells the horse for its keep, he is liable to be sued in trover by the owner. *Binn v. Pigot*, 9 C. & P. 208.

A bonâ fide purchaser of a horse from a person who has bought it, as the second purchaser knew, at a fair, without any evidence that he knew it

was obtained dishonestly, although it has been purchased on credit, and not paid for, is entitled to maintain trover against the original owner for retaking it. *North v. Jackson*, 2 F. & F. 198.

By 24 & 25 Vict. c. 96, s. 100, if any person guilty (inter alia) of obtaining any chattel, money, or other property by false pretences "shall be indicted on behalf of the owner of the property and convicted, in such case the property shall be restored to the owner." W. purchased and obtained delivery of certain sheep from the defendant by false pretences. The plaintiff purchased the sheep from W. and paid W. for them without knowledge of the fraud, the defendant having done nothing in the meantime to avoid the contract between himself and W. The defendant finding that the sheep were on the plaintiff's premises retook possession of them; W. having been convicted of obtaining the sheep by false pretences on the prosecution of the defendant:—Held, that the effect of 24 & 25 Vict. c. 96, s. 100, was not to re-vest the property in the sheep in the defendant as against the plaintiff, who had acquired a good title to them before the conviction, and consequently that the defendant was liable in an action by the plaintiff for the value of the sheep. *Moyce v. Newington*, 4 Q. B. D. 32; 48 L. J., Q. B. 125; 39 L. T. 535; 27 W. R. 319.

Sale of Stolen Beasts in Market Overt—Claim by Purchaser against Owner for Cost of keeping the Beasts.—The bonâ fide purchaser of stolen beasts sold in market overt cannot, in answer to a claim for them by the original owner after the conviction of the thief, counter-claim for the cost of their keep while the beasts were in the possession of the purchaser, for they were his own property until, on the conviction, the property re-vested in the original owner. *Walker v. Matthews*, 8 Q. B. D. 109; 51 L. J., Q. B. 243; 46 L. T. 915; 30 W. R. 338.

B. RECEIVERS OF STOLEN PROPERTY.

1. STATUTORY PROVISIONS.

By 24 & 25 Vict. c. 96, s. 91, *whosoever shall receive any chattel, money, valuable security, or other property whatsoever, the stealing, taking, extorting, obtaining, embezzling, or otherwise disposing whereof shall amount to a felony either at common law or by virtue of this act, knowing the same to have been feloniously stolen, taken, extorted, obtained, embezzled, or disposed of, shall be guilty of felony, and may be indicted and convicted either as an accessory after the fact or for a substantive felony, and in the latter case, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice; and every such receiver, howsoever convicted, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen, with or without whipping; provided, that no person, howsoever tried for receiving as aforesaid, shall be liable to be prosecuted a second time for the same offence. (Former provision, 7 & 8 Geo. 4, c. 29, s. 54.)*

By s. 95, *whosoever shall receive any chattel, money, valuable security, or other property whatsoever, the stealing, taking, obtaining, converting, or disposing whereof is made a misdemeanor by this act, knowing the same to have been unlawfully stolen, taken, obtained, converted, or disposed of, shall be guilty of a misdemeanor, and may be indicted and convicted thereof, whether the person guilty of the principal misdemeanor shall or shall not have been previously convicted thereof; or shall or shall not be amenable to justice; and every such receiver, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.*

By s. 97, *where the stealing or taking of any property whatsoever is by this act punishable on summary conviction, either for every offence, or for the first and second offence only, or for the first offence only, any person who shall receive any such property, knowing the same to be unlawfully come by, shall, on conviction thereof before a justice of the peace, be liable, for every first, second, or subsequent offence of receiving, to the same forfeiture and punishment to which a person guilty of a first, second or subsequent offence of stealing or taking such property is by this act made liable.*

2. WHAT IS A RECEIVING.

Receiver or Principal.—J. had employed M. to load sacks of oats, the property of J., from a vessel into the trams of K., who was to carry them on the trams to the warehouse of K. By previous concert between M. and K., oats were taken by M. from two of the sacks and put into a nose-bag in the absence of K. and hidden under a tram. K. returned in a few minutes and took the nose-bag and its contents from under the tram, and took them away, M. being then within three or four yards of him:—Held, that K. was not a receiver but a principal in the larceny. *Reg. v. McCarthy*, 2 C. & K. 379.

For Purpose of Concealment.—If a receiver of stolen goods receives them for the mere purpose of concealment, without deriving any profit at all, he is just as much a receiver as if he had purchased them. *Rea v. Richardson*, 6 C. & P. 335.

Taking into Possession.—Without proof of an actual taking into possession, an indictment for receiving goods knowing them to have been stolen cannot be sustained. *Reg. v. Hill*, 3 New Sess. Cas. 348; 1 Den. C. C. 453; T. & M. 150; 2 C. & K. 978; 18 L. J., M. C. 199; 13 Jur. 545.

A prisoner admits having bought an article, which is subsequently found in his house; that is sufficient evidence for a jury to convict of receiving without proof of an actual receipt, or that he had ever been at the house from before the purchase to the time of the charge. *Reg. v. Matthews*, T. & M. 337; 1 Den. C. C. 596; 14 Jur. 513.

In Harmony with or Opposition to Thief.—

W. stole a watch from A.; and while W. and L. were in custody together, W. told L. that he had "planted" the watch under a flag in the soot-cellar of L.'s house. After this L. was discharged, and went to the flag and took up the watch, and sent his wife to pawn it:—Held, that, if L. thus took the watch in consequence of W.'s information, W. telling L. in order that he might use the information by taking the watch, L. was indictable for this as a receiver of stolen goods; but that if this was an act done by L. in opposition to W., or against his will, it might be a question whether it would be a receiving. *Reg. v. Wade*, 1 C. & K. 739.

Control of Goods is Sufficient.—Two men having stolen some fowls, put them into a sack and carried them into the house of the prisoner's father at about half-past four o'clock in the morning. After remaining in the house about ten minutes, the two men were seen to come out at a back door, one of them carrying the sack, and the prisoner going before them with a light. The stable-door was closed by one of the party, and when the policeman entered he found the two thieves and the prisoner standing round the sack, which lay on the floor untied, as if bargaining for the fowls:—Held, that this was not a receiving within the statute, the prisoner never having had the goods under his control, and the whole transaction being only inchoate. *Reg. v. Wiley*, 2 Den. C. C. 37; 4 Cox, C. C. 412; T. & M. 367; 20 L. J., M. C. 4; 15 Jur. 134.

It is not necessary to prove an actual manual possession of stolen goods, in order to sustain an indictment for receiving the goods, but it is sufficient if the goods are shewn to have been under the control of the person charged with receiving. *Reg. v. Smith*, Dears. C. C. 494; 6 Cox, C. C. 554; 24 L. J., M. C. 135; 1 Jur., N. S. 575.

A. was indicted for feloniously receiving a watch and a hat. It was proved that a policeman, in consequence of information received from B. (the thief), went to a room in a lodging-house where A. slept, and in a box in that room found the hat. A. admitted that the hat had been brought there by B., but denied all knowledge of the watch. On the following day A. was taken into custody, and he then told the policeman that he knew where the watch was, but did not like to say anything about it before the people of the house. A. then took the policeman to a place where he said the watch was, but it was not found there, but he afterwards sent a boy for the watch, and on the boy bringing the watch to A., he gave it to the policeman:—Held, that there was sufficient evidence to go to the jury. *Reg. v. Hobson*, Dears. C. C. 400.

It is not necessary, to constitute a receiving of stolen goods, that the person indicted should have had manual possession of the goods; but directing a servant to dispose of them, as by pawning or otherwise, will be sufficient to support the charge. Stolen property was brought by the thief into A.'s shop; A., with guilty knowledge, called a servant and directed her to take the stolen goods to a pawn office and "pawn them for the girl" (the thief). A.'s servant did so accordingly, and brought back the money, which she handed to the thief in her mistress's presence. A. never had manual possession of either the goods or the money:—Held, that this amounted

to a receiving by A. of the stolen property. *Reg. v. Miller*, 6 Cox, C. C. 353.

Receipt by Wife of Prisoner.—Stolen goods were delivered by a thief to the wife of the prisoner in his absence; she paid 6d. on account, but the amount to be paid was not then fixed. The prisoner and the principal felon afterwards met, when the prisoner, with the knowledge that the goods had been stolen, agreed upon the price and paid the balance:—Held, that he was properly convicted of receiving the goods, knowing them to be stolen. *Reg. v. Woodward*, L. & C. 122; 9 Cox, C. C. 95; 31 L. J., M. C. 91; 8 Jur., N. S. 104; 5 L. T. 686; 10 W. R. 298.

Husband and wife were jointly indicted for receiving goods, knowing them to have been stolen. The jury found both guilty, and that the wife received the goods without the control or knowledge of, and apart from, her husband, and that he afterwards adopted his wife's receipt:—Held, that the conviction against the husband could not be sustained. *Reg. v. Dring*, Dears. & B. C. C. 329; 7 Cox, C. C. 380; 3 Jur., N. S. 1132.

But a husband may be convicted of feloniously receiving property which his wife has stolen voluntarily and without any constraint on his part, if he receives it knowing that she has stolen it. *Reg. v. M'Atthey*, L. & C. 250; 9 Cox, C. C. 251; 32 L. J., M. C. 35; 8 Jur., N. S. 1218; 7 L. T. 433; 11 W. R. 73.

3. WHAT IS STOLEN PROPERTY.

Goods of Partnership.—The effect of the 31 & 32 Vict. c. 116, s. 1, by which a partner or a joint owner in goods is rendered liable to be convicted of stealing goods in respect of which he is so jointly interested, is not to render the receiver of such goods, knowing the same to have been stolen by such partner, liable to be convicted as such receiver, under 24 & 25 Vict. c. 96, s. 91. *Reg. v. Smith*, 1 L. R., C. C. 266; 39 L. J., M. C. 112; 18 W. R. 932.

A. and B. were in partnership, and B., in fraud of the partnership, disposed of the goods of the firm to the prisoner, who knowingly received the same. The prisoner was indicted and convicted under the 24 & 25 Vict. c. 96, s. 91:—Held, that the conviction could not be supported. *Id.*

Wife taking Goods of Husband.—A wife, though she may have committed adultery, cannot steal her husband's goods; and therefore the adulterer receiving from her the goods which she has taken from her husband cannot be guilty of receiving stolen goods. *Reg. v. Kenny*, 2 Q. B. D. 307; 13 Cox, C. C. 397; 46 L. J., M. C. 156; 36 L. T. 36; 25 W. R. 679.

Stolen Goods discovered by Owner and Police.—A lad was detained on leaving his master's premises, and a policeman sent for, who searched him and took a stolen cigar from him in the master's presence. In consequence of the lad's statement, the cigar was returned to him with five others, which the lad took to the prisoner and gave to him:—Held, that the prisoner could not be convicted of feloniously receiving the cigars knowing them to be stolen, for that they were not stolen property at the time they were received, the master and the policeman having acted in concert in supplying the lad with the

six cigars, and instructing him what to do with them. *Reg. v. Hancock*, 38 L. T. 787.

A prisoner was convicted of feloniously receiving stolen goods under the following circumstances:—The goods were stolen, and sent by the thief in a parcel by railway, addressed to the prisoner. A policeman belonging to the railway company, from information he had received, examined the parcel at the railway station at the place of its destination and stopped it. It was called for by one of the thieves on the day of its arrival and refused to him. A porter of the company the next day, by the direction of the policeman, took it to a house which the thief who had called for it designated, and it was there received by the prisoner:—Held, that the conviction was wrong, as the goods had ceased to be stolen goods, within the statute, at the time of the receipt by the prisoner. *Reg. v. Schmidt*, 1 L. R., C. C. 15; 35 L. J., M. C. 94; 12 Jur., N. S. 149; 13 L. T. 679; 14 W. R. 286; 10 Cox, C. C. 172.

Stolen goods were found by the owner in the pockets of the thief; a policeman was sent for who took the goods and subsequently returned them to the thief, and the owner then sent the latter to sell them where he had sold others; he accordingly sold them at the shop of D. D. was tried and convicted of receiving the goods knowing them to have been stolen:—Held, that the conviction was wrong, as the facts did not constitute a receiving of stolen goods within 7 & 8 Geo. 4, c. 29, s. 54. *Reg. v. Dolan*, Dears. C. C. 436; 6 Cox, C. C. 449; 3 C. L. R. 295; 24 L. J., M. C. 59; 1 Jur., N. S. 72.

4. JOINT RECEIVERS.

Statute.—By 24 & 25 Vict. c. 96, s. 94, *if upon the trial of any two or more persons indicted for jointly receiving any property it shall be proved that one or more of such persons separately received any part or parts of such property, it shall be lawful for the jury to convict, upon such indictment, such of the said persons as shall be proved to have received any part or parts of such property.* (Former provision, 14 & 15 Vict. c. 100, s. 14.)

Proof of.—Two or more persons may be indicted jointly for receiving stolen property, knowing it to have been stolen, though each successively received the whole of the same at different times, and it makes no difference whether the receipt was direct from the felon or from an intermediate person. *Reg. v. Reardon or Rearden*, 1 L. R., C. C. 31; 35 L. J., M. C. 171; 12 Jur., N. S. 476; 14 L. T. 449; 14 W. R. 663.

If two are charged jointly with receiving stolen goods, a joint act of receiving must be proved. Proof that one received in the absence of the other, and afterwards delivered to him, will not suffice. *Reg. v. Messingham*, 1 M. C. C. 257.

Two were convicted under a count charging them with receiving goods knowing them to have been stolen, upon proof that they were present aiding and abetting a third receiver, who was found in actual possession of the box containing the goods, but the two former never had actual possession of the box:—Held, that the conviction was right. *Reg. v. Rogers*, 37 L. J., M. C. 83.

Where A., knowing that goods have been stolen, directs B., his servant, to receive them into his premises, and B., in pursuance of that direction, afterwards receives them in A.'s absence, B. knowing that they have been stolen, they may be jointly indicted for receiving them. *Reg. v. Parr*, 2 M. & Rob. 346.

5. INDICTMENT.

Statute.—By 24 & 25 Vict. c. 96, s. 92, in any indictment containing a charge of feloniously stealing any property it shall be lawful to add a count or several counts for feloniously receiving the same or any part or parts thereof, knowing the same to have been stolen, and in any indictment for feloniously receiving any property knowing it to have been stolen, it shall be lawful to add a count for feloniously stealing the same;

And if such indictment shall have been preferred and found against two or more persons, it shall be lawful for the jury who shall try the same to find all or any of the said persons guilty either of stealing the property or of receiving the same, or any part or parts thereof, knowing the same to have been stolen, or to find one or more of the said persons guilty of stealing the property, and the other or others of them guilty of receiving the same or any part or parts thereof knowing the same to have been stolen. (Former provisions, 11 & 12 Vict. c. 46, s. 3; 14 & 15 Vict. c. 100, s. 14.)

By s. 93, whenever any property whatsoever shall have been stolen, taken, extorted, obtained, embezzled or otherwise disposed of in such a manner as to amount to a felony, either at common law or by virtue of this act, any number of receivers at different times of such property, or of any part or parts thereof, may be charged with substantive felonies in the same indictment, and may be tried together, notwithstanding that the principal felon shall not be included in the same indictment, or shall not be in custody or amenable to justice. (Former provision, 14 & 15 Vict. c. 100, s. 15.)

Property same in each Count.—Where a count for feloniously receiving property knowing it to be stolen is joined with a count for feloniously stealing, it must appear with sufficient certainty that the property is the same in each count. *Reg. v. Sarfield*, 6 Cox, C. C. 12.

Property, how Described.—A receiver, in the case of a sheep feloniously stolen alive and killed, should be stated to have received mutton. *Reg. v. Cowell*, 2 East, P. C. 617.

On an indictment for stealing and receiving a mixture, it appeared that the thief had stolen two sorts of grain, and mixed them and sold them to the prisoner:—Held, that the latter could not be convicted on such indictment. *Reg. v. Robinson*, 4 F. & F. 43.

Thief Unknown.—A receiver may be indicted for receiving goods stolen by persons unknown. *Reg. v. Thomas*, 2 East, P. C. 781; *S. P.*, *Reg. v. Baxter*, 2 East, P. C. 781; 2 Leach, C. C. 578; 5 T. R. 33.

A count for a substantive felony in receiving stolen goods, which charged that the goods were stolen by "a certain evil-disposed person," is good. *Reg. v. Jervis*, 6 C. & P. 156.

Goods, how Obtained.—To bring a case of receiving within 7 & 8 Geo. 4, c. 29, s. 55, the indictment must allege the goods to have been obtained by false pretences and known to have been so. It is not enough to allege them to have been "unlawfully obtained, taken and carried away." *Reg. v. Wilson*, 2 M. C. C. 52.

Averment of Guilty Knowledge.—An indictment against a receiver of stolen goods must aver the guilty knowledge, which is the gist of the offence, correctly. *Reg. v. Kernon*, 2 Russ. C. & M. 562.

An indictment for receiving stolen goods alleged that the prisoner received the goods of A., "he, the said A., then knowing them to have been stolen." After a verdict of guilty, the counsel moved in arrest of judgment, on the ground that the scienter was omitted; but the quarter sessions amended the indictment by striking out "A.," and substituting the name of the prisoner:—Held, first, that it was bad as it was originally framed. *Reg. v. Larkin*, Dears. C. C. 365; 6 Cox, C. C. 377; 2 C. L. R. 775; 23 L. J., M. C. 125; 18 Jur. 539.

Held, secondly, that the objection was taken at the proper time. *Ib.*

Held, thirdly, that the indictment was not amendable after verdict. *Ib.*

Joinder of Counts.—A count for stealing articles may not be joined with a count for receiving those and other articles, knowing them to have been stolen. *Reg. v. Ward*, 2 F. & F. 18.

Goods "so as aforesaid Stolen."—A first count charged the prisoner with stealing certain goods and chattels, and a second count charged him with receiving "the goods and chattels aforesaid, of the value aforesaid, so as aforesaid stolen." After objection that he could not be found to have feloniously received goods stolen by himself, the case went to the jury, and he was acquitted upon the first count and convicted upon the second:—Held, that the conviction was good. *Reg. v. Huntley*, Bell, C. C. 238; 8 Cox, C. C. 260; 29 L. J., M. C. 170; 6 Jur., N. S. 80; 1 L. T. 384; 8 W. R. 183.

Where a prisoner was indicted for stealing goods, and in a subsequent count for receiving the goods, "so as aforesaid feloniously stolen," and the jury acquitted of the stealing and convicted of the receiving, the conviction was affirmed upon a case reserved upon a motion in arrest of judgment. *Reg. v. Craddock*, T. & M. 361; 2 Den. C. C. 31; 4 Cox, C. C. 409; 20 L. J., M. C. 31; 14 Jur. 1031.

Where the receiving is so laid, the judge should direct the jury to acquit upon the count for receiving, if they should not find the prisoner guilty of stealing. *Ib.*

6. TRIAL.

a. Jurisdiction.

Venue.—By 24 & 25 Vict. c. 96, s. 96, whosoever shall receive any chattel, money, valuable security or other property whatsoever, knowing the same to have been feloniously or unlawfully stolen, taken, obtained, converted or disposed of, may, whether charged as an accessory after the fact to the felony, or with a substantive felony, or with a misdemeanor only, be dealt with,

indicted, tried and punished in any county or place in which he shall have or shall have had any such property in his possession, or in any county or place in which the party guilty of the principal felony or misdemeanor may by law be tried, in the same manner as such receiver may be dealt with, indicted, tried and punished in the county or place where he actually received such property. (Former enactment, 7 & 8 Geo. 4, c. 29, s. 56.)

The half of a bank note, which had been stolen during its transit through the post-office from S. in Wiltshire to Bristol, was afterwards inclosed by the prisoner in a letter addressed to the bankers at S., requesting payment of it. This letter was posted by the prisoner at Bath, and arrived with its contents in due course at S. There was no evidence of any receipt or possession by the prisoner in Wiltshire:—Held, upon an indictment for receiving the stolen half note, that he was rightly tried in Wiltshire, as the possession of the post-office servants, or of the bankers in Wiltshire, was his possession, and the case therefore was within 7 & 8 Geo. 4, c. 29, s. 56. *Reg. v. Cryer*, Dears. & B. C. C. 324; 26 L. J., M. C. 192; 3 Jur., N. S. 698.

Jurisdiction shewn in Indictment.—A count for receiving stolen goods in a different county from that in which the trial takes place, coupled with other counts for the larceny, under the 11 & 12 Vict. c. 46, must, by distinct and express averments, shew upon the face of it jurisdiction within the 7 & 8 Geo. 4, c. 29, s. 56. *Reg. v. Martin*, 3 New Sess. Cas. 575; T. & M. 78; 1 Den. C. C. 398; 2 C. & K. 950; 18 L. J., M. C. 137; 13 Jur. 368.

Goods stolen Abroad.—A person had stolen goods in Guernsey and brought them to England, where he was taken and committed for trial:—Held, that Guernsey not being part of the United Kingdom, he could not be convicted of receiving in England the goods so stolen in Guernsey. *Reg. v. Debruiel*, 11 Cox, C. C. 207.

b. Practice.

Plea.—Plea by one prisoner, indicted singly for receiving stolen goods, of autrefois acquit, under an indictment against him and four others, on which one was convicted, and the prisoner and three others were acquitted, is good. *Reg. v. Dawn*, 1 M. C. C. 424.

Election.—By 24 & 25 Vict. c. 96, s. 92, *where any such indictment shall have been preferred and found against any person, the prosecutor shall not be put to his election, but it shall be lawful for the jury who shall try the same to find a verdict of guilty, either of stealing the property, or of receiving the same, or any part or parts thereof, knowing the same to have been stolen.*

In indictments under 11 & 12 Vict. c. 46, s. 3, there may be as many counts charging a felonious receiving as there are counts charging stealing; and the prosecutor cannot be put to his election on what count or counts he will proceed. *Reg. v. Beeton*, 1 Den. C. C. 414; T. & M. 87; 2 C. & K. 960; 4 New Sess. Cas. 60; 2 Cox, C. C. 451; 18 L. J., M. C. 117; 13 Jur. 394.

Principal found Guilty of Embezzlement.—A. was indicted for embezzling H.'s goods, and for larceny of H.'s goods; B. for receiving goods, the property of H., knowing them to have been stolen. A. was found guilty of embezzling only, and B. for feloniously receiving:—Held, that the conviction of B. was right, for 7 & 8 Geo. 4, c. 29, s. 47, enacts, that every person who has embezzled within the meaning of that section, "shall be deemed to have feloniously stolen from his master," and that being so, B.'s offence was properly described in the count for receiving. *Reg. v. Frampton*, Dears. & B. C. C. 585; 8 Cox, C. C. 16; 27 L. J., M. C. 229; 4 Jur., N. S. 566.

c. Evidence.

Admissibility of.—D. and G. were charged with jointly receiving stolen goods. The evidence was, that D. first received the goods on the road between B. and S. and that subsequently G. received a portion of them at S.:—Held, that the evidence as to the separate act of receiving by G. was improperly admitted, and that the indictment was satisfied by the proof of the receiving by D. *Reg. v. Dovey*, 4 Cox, C. C. 428; 18 L. J., M. C. 105; 15 Jur. 230.

If an indictment against a receiver states the principal felony to have been committed by A.; whatever would have been evidence of the principal felony to convict A., is receivable to prove this allegation on the trial of the receiver, but is not conclusive. *Reg. v. Blich*, 4 C. & P. 377.

Evidence of Thief.—An admission of his guilt, made by the thief while in custody, in the presence of the receiver, is evidence against the receiver. *Reg. v. Cox*, 1 F. & F. 90.

On an indictment for feloniously receiving goods, knowing them to have been stolen, it is unsafe to convict a party as receiver on the evidence of the thief, unless it is confirmed. *Reg. v. Robinson*, 4 F. & F. 43.

On an indictment for receiving goods, knowing them to have been stolen, the mere fact that they were found on the prisoner's premises is not sufficient to confirm the evidence of the thief, so far as to make it proper to convict. *Reg. v. Pratt*, 4 F. & F. 315.

Stealing must be Proved.—In an indictment for receiving stolen goods, knowing them to have been stolen by a person named, the stealing by the person must be proved, or the receiver must be acquitted. *Reg. v. Woolford*, 1 M. & Rob. 384.

Knowledge or Belief that thing Stolen.—Stolen property being found concealed in an old engine-house, and it being watched, the prisoners were seen taking it away:—Held, that, to warrant the conviction of the prisoners on an indictment charging them as receivers, the jury must be satisfied that the property had been stolen by some other person to the knowledge of the prisoners, and that there should be some evidence to shew that such was the case. *Reg. v. Densley*, 6 C. & P. 399. Cp. *Reg. v. Rymes*, 3 C. & K. 327.

To justify a conviction for receiving stolen property in the case of goods found, it is not sufficient to shew that the prisoner had a general knowledge of the circumstances under which the goods were taken, unless the jury is also satisfied that he knew

that the circumstances were such as constituted a larceny. *Reg. v. Adams*, 1 F. & F. 86.

In an indictment for receiving goods, knowing them to have been stolen, belief without actual knowledge is sufficient to sustain it. *Reg. v. White*, 1 F. & F. 665.

Evidence of other Cases.]—By the Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), s. 19, *where proceedings are taken against any person for having received goods knowing them to be stolen, or for having in his possession stolen property, evidence may be given at any stage of the proceedings that there was found in the possession of such person other property stolen within the preceding period of twelve months, and such evidence may be taken into consideration for the purpose of proving that such person knew the property to be stolen, which forms the subject of the proceedings taken against him.*

Where proceedings are taken against any person for having received goods knowing them to be stolen, or for having in his possession stolen property, and evidence has been given that the stolen property has been found in his possession, then, if such person has within five years immediately preceding been convicted of any offence involving fraud or dishonesty, evidence of such previous conviction may be given at any stage of the proceedings and may be taken into consideration for the purpose of proving that the person accused knew the property, which was proved to be in his possession, to have been stolen: provided that not less than seven days' notice in writing shall have been given to the person accused that proof is intended to be given of such previous conviction; and it shall not be necessary for the purposes of this section to charge in the indictment the previous conviction of the person so accused.

Possession of other Stolen Property Evidence of Receiving Stolen Goods.]—In order to give evidence of guilty knowledge under this section, it is not sufficient merely to prove that "other property stolen within the preceding period of twelve months" had at some time previously been dealt with by the prisoner. It must be proved that such "other property" was found in the possession of the prisoner at the time when he is found in possession of the property which is the subject of the indictment. *Reg. v. Drage*, 14 Cox, C. C. 83.

Prisoner was indicted for receiving stolen goods. To shew guilty knowledge evidence was tendered under 34 & 35 Vict. c. 112, s. 19, to shew that a short time previously the prisoner had sold for half its value and had otherwise disposed of other property stolen within the preceding period of twelve months.—Held, that words of the statute, 34 & 35 Vict. c. 112, s. 19, did not extend to such evidence, which was therefore inadmissible. *Id.*

On the trial of an indictment for larceny and receiving stolen goods, evidence may be given under 34 & 35 Vict. c. 112, s. 19, that there was found in the prisoner's possession other property stolen within the preceding period of twelve months, although such other property is the subject of another indictment against him, to be subsequently tried at the same assizes. *Reg. v. Jones*, 14 Cox, C. C. 3.

On an indictment for receiving stolen goods, the onus of proving the knowledge that the goods

were stolen is not shifted from the prosecution to the prisoner by service of a notice under 32 & 33 Vict. c. 99 (Habitual Criminals Act, repealed 34 & 35 Vict. c. 112), s. 11, and proof of a previous conviction. *Reg. v. Davies*, 1 L. R., C. C. 272; 39 L. J., M. C. 135; 22 L. T. 763; 18 W. R. 958.

The Habitual Criminals Act, in case of a previous conviction, has not the effect of throwing upon the prisoner the proof that when he received a stolen bank note, he did not know it to have been stolen, there being no words to that effect in the operative part of the clause. *Reg. v. Harwood*, 11 Cox, C. C. 388.

If the prisoner at different times receives property stolen from the prosecutor, although the substantive charge must be confined to some one receiving, yet the other receivings may be given in evidence to shew a guilty knowledge that the goods were stolen. *Reg. v. Dunn*, Car. C. L. 132; 1 M. C. C. 146.

A prisoner was indicted for receiving stolen goods, knowing them to have been stolen; to prove the scienter, evidence was given, that on a previous occasion other stolen goods, the property of different owners, had been found in the possession of the prisoner:—Held, that the evidence was improperly admitted, as it is a general principle of the law of England, that proof that a man had committed one offence is no proof that he has committed another, and as the possession of stolen goods on a previous occasion could not shew any knowledge on the part of the prisoner that the particular goods mentioned in the indictment were stolen. *Reg. v. Oddy*, 2 Den. C. C. 264; 5 Cox, C. C. 210; T. & M. 593; 20 L. J., M. C. 108; 15 Jur. 517.

A prisoner was to be tried on three indictments: for receiving stolen tin, for stealing iron, and for receiving stolen brass. A constable went with a search-warrant to search the prisoner's premises for stolen iron, and, having read the warrant to the prisoner, the latter made a statement:—Held, on the trial of the first indictment, that the whole of the statement was receivable, although part of it related to the charge respecting the iron; and also, that evidence might be given, that, at the time of the search, the prisoner endeavoured to conceal some brass, and also, that almost immediately after he was taken away from the premises, at the conclusion of the search, his wife carried some tin under her cloak from a warehouse on the premises. *Reg. v. Mansfield*, Car. & M. 140.

On an indictment against A. for stealing, and B. for receiving goods, evidence that on various former occasions portions of the commodity stolen have been missed, and that the prisoners have, after such occasions, been found selling such a commodity; and that on the last occasion it was part of what was stolen, is sufficient to fix the receiver with a guilty knowledge. *Reg. v. Nicholls*, 1 F. & F. 51.

Conviction when Evidence justifies Conviction as Principal in Second Degree.]—An indictment charged S. with stealing 18s. 6d., and C. with receiving the same. The facts were: S. was a barman at a refreshment bar, and C. went up to the bar, called for refreshments and put down a florin. S. served C., took up the florin, and took from his employer's till some money, and gave C. as his change 18s. 6d., which C. put in his pocket and went away with it. On leaving the

place he took some silver from his pocket, and was counting it when he was arrested. On entering the bar signs of recognition took place between S. and C., and C. was present when S. took the money from the till. The jury convicted S. of stealing and C. of receiving:—Held, that this was evidence which the judge ought to have left to the jury as reasonable evidence upon which C. might have been convicted as a principal in the second degree; and that therefore the conviction for receiving could not be sustained. *Reg. v. Coggins*, 29 L. T. 469.

Where a person is charged in two counts with stealing and receiving, the jury may return a verdict of guilty on the latter count, if warranted by the evidence, although the evidence is also consistent with the prisoner having been a principal in the second degree in the stealing. *Reg. v. Hilton*, Bell, C. C. 20; 28 L. J., M. C. 28; 5 Jur., N. S. 47; 32 L. T., O. S. 151; 7 W. R. 59.

What Sufficient to support Conviction.]—

When a woman was indicted for larceny of a gold chain, a bank note, and money, and also for receiving, and the evidence against her consisted of the fact of the stolen property having been found concealed on her person at about ten o'clock on the morning after the night on which the property was stolen, and she made a voluntary statement asserting that she had found the things, the judge directed the jury to acquit her on the count for receiving, but the jury, notwithstanding, acquitted her on the count for larceny, but convicted her of receiving, and the judge did not insist on the direction he had previously given, but reserved the question as to whether the evidence was sufficient in law to sustain the conviction on the count for receiving:—Held, that the evidence was sufficient. *Reg. v. McMahon*, 13 Cox, C. C. 275.

Held, also, that whether the judge withdrew his direction as to the count for receiving or not, the evidence being sufficient in law to sustain the conviction, it must stand. *Id.*

B., a letter carrier, and C. his mother, were indicted for receiving a gold pendant, knowing it to be stolen. Before the 23rd of October, a box containing the pendant, a brooch, and some other articles of jewellery, was sent by post to a Mrs. W., residing at D. A letter was posted at the same time. Both should have arrived that evening. Mrs. W. got the letter the next evening, but not the box. B. was a letter carrier at D., but it would not have been his duty to deliver the letter and parcel. From the way the letters and parcels were sorted, he might have taken them, but so might others. On the 30th of October C. attempted to pawn the pendant. While she was in the pawn-shop, B. remained outside, and left along with her. Early in November, a girl who knew B. received a box by post, directed in B.'s handwriting, containing the brooch which was in the box with the pendant:—Held, by a majority of the Irish judges, that the jury was justified in convicting B. and C. of jointly receiving the pendant, knowing it to be stolen. *Reg. v. Byrne*, 4 Ir. R., C. L. 68.

In an indictment for receiving goods knowing them to be stolen, evidence that the thief had at one time been lawfully employed to sell such

articles to the prisoner, will warrant an acquittal in the absence of any evidence that the prisoner knew that the authority had been withdrawn. *Reg. v. Wood*, 1 F. & F. 497.

The prisoner had been a lodger in the prosecutor's house, and left under circumstances not disclosed. On the following day the prosecutor's wife also left the house, taking with her a small bundle. Two days after the prisoner was found in company with the prosecutor's wife (who was passing by the prisoner's name) on board a ship bound for Quebec. Property belonging to the prosecutor, of a bulk greater than could have been comprised in the bundle taken by the wife, was found in the prisoner's cabin and upon his person:—Held, that there was some evidence to support a conviction for receiving the property, knowing it to have been stolen. *Reg. v. Deery*, L. & C. 240; 9 Cox, C. C. 225; 32 L. J., M. C. 33; 8 Jur., N. S. 1216; 7 L. T. 366; 11 W. R. 43.

Recent Possession.]—Where a prisoner was found in the recent possession of some stolen sheep, of which he could give no satisfactory account, and it might reasonably be inferred from the circumstances that he did not steal them himself:—Held, that there was evidence for the jury that he received them knowing them to have been stolen. *Reg. v. Langmead*, L. & C. 427; 9 Cox, C. C. 464; 10 L. T. 350.

XXIII. LIBEL.

See DEFAMATION—Fisher's "Digest."

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1. HOUSES OR BUILDINGS, BY TENANTS.

Statute.]—By 24 & 25 Vict. c. 97, s. 13, whoever, being possessed of any dwelling-house or other building, or part of any dwelling-house or other building, held for any term of years or other less term, or at will, or held over after the termination of any tenancy, shall unlawfully and maliciously pull down or demolish, or begin to pull down or demolish, the same or any part thereof, or shall unlawfully and maliciously pull down or sever from the freehold any fixture being fixed in or to such dwelling-house or building, or part of such dwelling-house or building, shall be guilty of a misdemeanor.

2. MANUFACTURES AND MATERIALS.

Destroying Materials or Implements.]—By 24

& 25 Vict. c. 97, s. 14, *whosoever shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or to render useless, any goods or article of silk, woollen, linen, cotton, hair, mohair, or alpaca, or of any one or more of those materials mixed with each other or mixed with any other material, or any framework-knitted piece, stocking, hose, or lace, being in the loom or frame, or on any machine or engine, or on the rack or tenters, or in any stage, process, or progress of manufacture, or shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or to render useless, any warp or shute of silk, woollen, linen, cotton, hair, mohair, or alpaca, or of any one or more of those materials mixed with each other or mixed with any other material, or shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or render useless, any loom, frame, machine, engine, rack, tackle, tool, or implement, whether fixed or moveable, prepared for or employed in carding, spinning, throwing, weaving, fulling, shearing, or otherwise manufacturing or preparing any such goods or articles, or shall by force enter into any house, shop, building, or place, with intent to commit any of the offences in this section mentioned, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping. (Previous enactment, 7 & 8 Geo. 4, c. 30, s. 3.)*

Stage, Process, or Progress.]—Goods remain in “a stage, process, or progress of manufacture,” within 7 & 8 Geo. 4, c. 30, s. 3, though the texture is complete, if they are not yet brought into a condition fit for sale. *Reg. v. Woodhead*, 1 M. & Rob. 549.

A warp not sized, but on its way to the sizers to be sized to fit it for being used in manufacturing goods, is not a “warp in any stage, process, or progress of manufacture,” or prepared for or employed in carding, spinning, &c., within 7 & 8 Geo. 4, c. 30, s. 3, though the indictment is not bad for not averring it to be so. *Reg. v. Clegs*, 3 Cox, C. C. 295.

Tackle.]—The cords employed to raise the harness or the working tools of a loom, in order to move the shuttle to and fro, constitute tackle employed in weaving, and, therefore, cutting them was an offence within 7 & 8 Geo. 4, c. 30, s. 3. *Reg. v. Smith*, 6 Cox, C. C. 198.

Under this statute, the maliciously cutting such tackle is a complete offence, and it is unnecessary to aver or prove an intent to destroy or render it useless. *Id.*

Quere, whether cutting the thrum, i.e., the ends of the woollen threads generally left in the machine when a piece of cloth is finished, for the purpose of more readily adjusting the succeeding work, is an offence within the statute. At all events, it does not support a count for maliciously cutting woollen warp; but the fact of cutting the thrum may be given in evidence in support of a count for cutting tackle, in order to shew the animus of the latter act, and that it was done maliciously. *Id.*

Frame—Removing Part.]—The taking out and carrying away the piece of iron called the half-jack, from a frame used for the making of framework-knitted stockings, was a damaging the frame, within 28 Geo. 3, c. 55, s. 4, as it made the frame imperfect and inoperative, although the part taken out was not injured, and the replacing it would again make the frame perfect. *Rea v. Tacey*, R. & R. C. C. 452.

Loom—Destroying Part of.]—The cutting or destroying part of a loom was not within 22 Geo. 3, c. 40, s. 1, although the charge in the indictment was of an intent to cut and destroy certain tools employed in the woollen trade. *Rea v. Hill*, R. & R. C. C. 483.

Indictment.]—An indictment on 7 & 8 Geo. 4, c. 30, s. 3, for feloniously damaging warps of linen yarn, with intent to destroy or render them useless, need not allege that the warps at the time of the damage done were prepared for or employed in carding, spinning, weaving, &c., or otherwise manufacturing or preparing any goods or article of silk, woollen, linen, &c. *Rea v. Ashton*, 2 B. & Ad. 750.

3. MACHINERY.

Destroying or rendering Useless.]—By 24 & 25 Vict. c. 97, s. 15, *whosoever shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or to render useless, any machine or engine, whether fixed or moveable, used or intended to be used for sowing, reaping, mowing, threshing, ploughing, or draining, or for performing any other agricultural operation, or any machine or engine, or any tool or implement, whether fixed or moveable, prepared for or employed in any manufacture whatsoever (except the manufacture of silk, woollen, linen, cotton, hair, mohair, or alpaca goods, or goods of any one or more of those materials mixed with each other or mixed with any other material, or any framework-knitted piece, stocking, hose, or lace), shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years, and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping. (Former enactments, 7 & 8 Geo. 4, c. 30, s. 4, and 7 Will. 4 & 1 Vict. c. 90, s. 5.)*

Damaging with Intent to render Useless.]—A person plugging up the feed-pipe of a steam-engine, and displacing other parts of the engine in such a way as rendered it temporarily useless, and would have caused an explosion if the obstruction had not been discovered, and with some labour removed, is guilty of damaging the engine, with intent to render it useless within 24 & 25 Vict. c. 97, s. 15. *Reg. v. Fisher*, 1 L. R., C. C. 7; 35 L. J., M. C. 57; 11 Jur., N. S. 983; 13 L. T. 380; 14 W. R. 58; 10 Cox, C. C. 146.

Machines—What are.]—Ploughs of the description commonly used in agriculture are machines within the statute. *Reg. v. Gray*, 9 Cox, C. C. 417; L. & C. 365; 33 L. J., M. C. 78; 10 Jur., N. S. 160; 9 L. T. 733; 12 W. R. 350.

Water-wheel Destroyed—Other Means of setting Machine in Motion.]—A. had a threshing-machine worked by water, the water-wheel having been put up for the sole purpose of working this machine, and never having been used for anything else; A., fearing the destruction of the machine by a mob, took it down, leaving the water-wheel standing. The prisoners broke the water-wheel:—Held, to be a felony, under 7 & 8 Geo. 4, c. 30, s. 4; and the fact that A. sometimes worked the threshing-machine by horses made no difference. *Reg. v. Fidler*, 4 C. & P. 449.

Machine taken to Pieces—Part only Destroyed.]—If a person has had a threshing-machine taken to pieces, he expecting a mob to come and destroy it, and the mob comes and destroys the different parts of the machine when thus separated, this was a felony within 7 & 8 Geo. 4, c. 30, s. 4. *Reg. v. Mackerel*, 4 C. & P. 448.

Where the prisoner was indicted for destroying a threshing-machine, and it appeared that it had been previously taken to pieces by the owner, by separating the arms and other parts of it, for the purpose of placing it in safety, but with a view to put it together again, and it was destroyed whilst in this disjointed state; it was decided that the offence was within 7 & 8 Geo. 4, c. 30, s. 4. *Reg. v. Hutchins*, Deac. C. L. 1517.

Where certain side boards were wanting to the machine at the time it was destroyed, but which did not render it so defective as to prevent it altogether from working, though it would not work so effectually as if those boards had been made good:—Held, that it was still a threshing-machine within the meaning of the statute. *Reg. v. Bartlett*, Deac. C. L. 1517.

Where the owner removed a wooden stage belonging to the machine on which the man who fed the machine was accustomed to stand, and had also taken away the legs, and it appeared in evidence that though the machine could not be conveniently worked without some stage for the man to stand on, yet that a chair or table, or a number of sheaves of corn, would do nearly as well, and that it could also be worked without the legs; it was held, that the machine was an entire one within the act, notwithstanding the stage and legs were wanting. *Reg. v. Chubb*, Deac. C. L. 1518.

But where the prosecutor had not only taken the machine to pieces, but had broken the wheel of it, before the mob came to destroy it, for fear of having it set on fire and endangering his premises, and it was proved that without the wheel the engine could not be worked; in this case it was held, that the remaining parts of the machine, which were destroyed by the mob, did not constitute a threshing-machine within the meaning of the statute. *Reg. v. West*, Deac. C. L. 1518.

Indictment.]—An indictment under 24 & 25 Vict. c. 97, s. 15, for damaging a machine, with intent to destroy the same, charging the offence to have been committed "unlawfully and maliciously," in the language of the statute, but omitting the word "feloniously," is bad, as the word "feloniously" is a term of art and necessary in all indictments for felony, whether at common law or created by statute. *Reg. v. Gray*, 9 Cox,

C. C. 417; L. & C. 365; 33 L. J., M. C. 78; 10 Jur., N. S. 160; 9 L. T. 733; 12 W. R. 350.

Evidence—Admissibility.]—On an indictment for breaking a threshing-machine, the judge allowed a witness to be asked whether the mob by whom the machine was broken did not compel persons to go with them, and then compel each person to give one blow to the machine; and also whether, at the time when the prisoner and himself were forced to join the mob, they did not agree together to run away from the mob the first opportunity. *Reg. v. Crutchley*, 5 C. & P. 133.

4. MINES.

Setting Fire to.]—By 24 & 25 Vict. c. 97, s. 26, *whosoever shall unlawfully and maliciously set fire to any mine of coal, cannel coal, anthracite, or other mineral fuel, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.* (Former provision, 7 Will. 4 & 1 Vict. c. 89, s. 9.)

Attempt to Set Fire to.]—By s. 27, *whosoever shall unlawfully and maliciously, by any overt act, attempt to set fire to any mine, under such circumstances that if the mine were thereby set fire to, the offender would be guilty of felony, shall be guilty of felony.* (Former provision, 9 & 10 Vict. c. 25, s. 7.)

Attempting to Drown.]—By s. 28, *whosoever shall unlawfully and maliciously cause any water to be conveyed or run into any mine, or into any subterraneous passage communicating therewith, with intent thereby to destroy or damage such mine, or to hinder or delay the working thereof, or shall with the like intent unlawfully and maliciously pull down, fill up, or obstruct, or damage with intent to destroy, obstruct, or render useless, any airway, waterway, drain, pit, level, or shaft or of belonging to any mine, shall be guilty of felony: provided that this provision shall not extend to any damage committed underground by any owner of any adjoining mine in working the same, or by any person duly employed in such working.* (Former provision, 7 & 8 Geo. 4, c. 30, s. 6.)

Servants innocently acting under Master's Orders.]—If A. and B. were the owners of adjoining mines, and A. asserting that a certain airway belonged to him, directed his workmen to stop it up, and they, acting *bonâ fide*, and believing that A. had a right to give such an order, did so, they were not guilty of felony within the 7 & 8 Geo. 4, c. 30, s. 6, for stopping up the airway of a mine, even though A. knew that he had no right to the airway; but if either of the workmen knew that the stopping up of the airway was a malicious act of his master, such workman would be guilty of the felony. *Reg. v. James*, 8 C. & P. 131.

Acts done in Exercise of Supposed Right.]—The provisions of the 24 & 25 Vict. c. 97, s. 28,

which enact that "whosoever shall unlawfully and maliciously do certain acts therein specified, with intent to damage or obstruct a mine, or the working or apparatus of a mine, shall be guilty of felony," do not render a person criminally liable for acts causing such damage, but done in a bonâ fide exercise of a supposed right, and without a wicked mind. *Reg. v. Matthews*, 14 Cox, C. C. 5.

Indictment—Property, inwhom Laid.—In an indictment under 7 & 8 Geo. 4, c. 30, s. 6, the mine might be laid as the property of the person in possession and working it, though only an agent for others. *Reg. v. Jones*, 2 M. C. C. 293; 1 C. & K. 181.

Damaging Engines for Working.—By s. 29, *whosoever shall unlawfully and maliciously pull down or destroy, or damage with intent to destroy or render useless, any steam-engine or other engine for sinking, draining, ventilating, or working, or for in anywise assisting in sinking, draining, ventilating, or working any mine, or any appliance or apparatus in connexion with any such steam or other engine, or any staith, building, or erection used in conducting the business of any mine, or any bridge, waggon-way, or trunk for conveying minerals from any mine, whether such engine, staith, building, erection, bridge, waggon-way, or trunk be completed or in an unfinished state, or shall unlawfully and maliciously stop, obstruct, or hinder the working of any such steam or other engine, or of any such appliance or apparatus as aforesaid, with intent thereby to destroy or damage any mine, or to hinder, obstruct, or delay the working thereof, or shall unlawfully and maliciously wholly or partially cut through, sever, break, or unfasten, or damage with intent to destroy or render useless, any rope, chain, or tackle, of whatsoever material the same shall be made, used in any mine, or in or upon any inclined plane, railway, or other way, or other work whatsoever, in anywise belonging or appertaining to, or connected with, or employed in any mine, or the working or business thereof, shall be guilty of felony.* (Former enactments, 7 & 8 Geo. 4, c. 30, s. 7 and 23 & 24 Vict. c. 29, s. 1.)

Erection used in Business of Mine.—The bottom of the shaft of a mine had water in it, and the owner of the mine had caused a scaffold to be erected at some distance above the bottom of the mine, for the purpose of working a vein of coal which was on a level with the scaffold:—Held, that this scaffold was an "erection used in the conducting the business of a mine," within 7 & 8 Geo. 4, c. 30, s. 7, and the damaging it, with intent to destroy it, or to render it useless, was felony. *Reg. v. Whittingham*, 9 C. & P. 235.

Engine—Proof of Damage to Drum.—A coal mine was worked by a steam-engine, which caused a cylinder, called a "drum," to revolve and take up the rope as the coal was drawn up from the mine:—Held, that proof of damaging the drum would not support an indictment which charged the damaging a steam-engine used in working a mine. 1*b*.

— **Driving when no Machinery attached.**]
—A steam-engine used in draining and working

a mine had been stopped and locked up for the night. The prisoner got into the engine-house, and set it going, and there being no machinery attached, the engine went with great velocity, and received damage:—Held, that this was a damaging of the engine, within 7 & 8 Geo. 4, c. 30, s. 7. *Reg. v. Norris*, 9 C. & P. 241.

Acts done in Exercise of Supposed Right.—The provisions of the 24 & 25 Vict. c. 97, s. 29, do not render a person criminally liable for acts causing such damage, if done in a bonâ fide exercise of a supposed right, and without a wicked mind. *Reg. v. Matthews*, 14 Cox, C. C. 5.

5. SEA AND RIVER BANKS.

Statute.—By 24 & 25 Vict. c. 97, s. 30, *whosoever shall unlawfully and maliciously break down, or cut down, or otherwise damage or destroy any sea bank or sea wall, or the bank, dam, or wall of or belonging to any river, canal, drain, reservoir, pool, or marsh, whereby any land or building shall be, or shall be in danger of being, overflowed or damaged, or shall unlawfully and maliciously throw, break, or cut down, level, undermine, or otherwise destroy any quay, wharf, jetty, lock, sluice, floodgate, weir, tunnel, towing-path, drain, watercourse, or other work belonging to any port, harbour, dock, or reservoir, or on or belonging to any navigable river or canal, shall be guilty of felony.* (Former provision, 7 & 8 Geo. 4, c. 30, s. 12.)

By s. 31, *whosoever shall unlawfully and maliciously cut off, draw up, or remove any piles, chalk, or other materials fixed in the ground, and used for securing any sea bank, or sea wall, or the bank, dam, or wall of any river, canal, drain, aqueduct, marsh, reservoir, pool, port, harbour, dock, quay, wharf, jetty, or lock, or shall unlawfully and maliciously open or draw up any floodgate or sluice, or do any other injury or mischief to any navigable river or canal, with intent and so as thereby to obstruct or prevent the carrying on, completing, or maintaining the navigation thereof, shall be guilty of felony.* (Former provision, 7 & 8 Geo. 4, c. 30, s. 12.)

Obstructing Passage over Sea Bank.—By a haven improvement act, any person who shall place on any space of ground immediately adjoining to the haven, and within the space of ten feet from high-water mark, any goods, materials, or articles whatsoever, so as to obstruct the free and commodious passage through and over the same, shall forfeit and pay any sum not exceeding 5*l*. B. placed three boats on the space of ground immediately adjoining the haven, and within the space of 10 feet from high-water mark, so as to obstruct the free and commodious passage to and over the same. There was no public right of passage over the space of ground, and it was occupied by B.:—Held, by Cockburn, C. J., Crompton, J., and Blackburn, J., that B. could not be convicted, as the provision could only apply to cases where a public right of passage existed; but by Wightman, J., that by the express terms of the act, and the apparent intention, the provision extended to such a case, and that B. was liable to be convicted. *Harrod v. Worship*, 30 L. J., M. C. 165.

6. SHIPS AND SEA SIGNALS.

Setting Fire to, Casting Away, or Destroying Ships.—By 24 & 25 Vict. c. 97, s. 42, *whosoever shall unlawfully and maliciously set fire to, cast away, or in anywise destroy any ship or vessel, whether the same be complete or in an unfinished state, shall be guilty of felony.* (Former provision, 7 Will. 4 & 1 Vict. c. 89, s. 6.)

By s. 43, *whosoever shall unlawfully and maliciously set fire to, or cast away, or in anywise destroy any ship or vessel, with intent thereby to prejudice any owner or part owner of such ship or vessel, or of any goods on board the same, or any person that has underwritten or shall underwrite any policy of insurance upon such ship or vessel, or on the freight thereof, or upon any goods on board the same, shall be guilty of felony.* (Former provision, 7 Will. 4 & 1 Vict. c. 89, s. 6.)

By s. 44, *whosoever shall unlawfully and maliciously, by any overt act, attempt to set fire to, cast away, or destroy any ship or vessel, under such circumstances that, if the ship or vessel were thereby set fire to, cast away, or destroyed, the offender would be guilty of felony, shall be guilty of felony.*

By s. 45, *whosoever shall unlawfully and maliciously place or throw in, into, upon, against, or near any ship or vessel any gunpowder or other explosive substance, with intent to destroy or damage any ship or vessel or any machinery, working tools, goods, or chattels, shall, whether or not any explosion take place, and whether or not any injury be effected, be guilty of felony.*

By 12 Geo. 3, c. 24, it is a capital offence to burn the Queen's ships of war.

Revolt on Ship.—It was an offence within 11 & 12 Will. 3, c. 7, s. 9, to make a revolt in a ship, or to endeavour to make one, though the object is not to run away with the ship, or to commit any act of piracy, but to force the captain to redress supposed grievances. *Reg. v. Hastings*, 1 M. C. C. 82.

If the crew, or part of the crew, of a ship combine together to resist the captain, especially if the object is to deprive him of his command, it will amount to making a revolt, within 11 & 12 Will. 3, c. 7, s. 9; and it will be no answer to shew that there were grievances, which, by their resistance, the men sought to redress. *Reg. v. McGregor*, 1 C. & K. 429.

Intent to Prejudice Part-owner.—The destruction of a vessel by a part-owner shews an intent to prejudice the other part-owner, though he has insured the whole ship, and promised that the other part-owner should have the benefit thereof. *Reg. v. Philp*, 1 M. C. C. 264.

Party in this Country to Conspiracy.—On an indictment against a foreigner, who was ship's carpenter on board a foreign merchant ship, for conspiring in this country, with the foreign owner and master, to destroy or cast away the vessel, with intent to prejudice the owners of goods on board, or the insurers of the ship or cargo, it being admitted that the prisoner was party to the scuttling of the ship on the high seas, the jury was directed to consider whether the prisoner was a party in this country to a previous plan or conspiracy to destroy the ship,

not limited to its destination on the high seas, the principal offence not being triable in this country. *Reg. v. Kohn*, 4 F. & F. 68.

Cast Away or Destroyed.—If a ship was stranded, and afterwards got off in such a state as to be easily refitted, she could not be said to have been cast away or destroyed, under 4 Geo. 1, c. 12, and 11 Geo. 1, c. 29. *Reg. v. De Londo*, 2 East, P. C. 1098.

Accessory before Fact.—A person might be tried under 7 Will. 4 & 1 Vict. c. 89, ss. 6, 11, as an accessory before the fact to the offence of setting fire to a vessel of which he was a part-owner. *Reg. v. Wallace*, Car. & M. 200.

Convicted though Principal not Tried.—An indictment was properly framed, which stated that the principal felon cast away and destroyed a vessel, and that the accessory incited, moved, aided, counselled, hired and commanded him to do it; and the accessory might be convicted on an indictment so framed, although the principal had not been tried, and did not appear to be amenable to justice. *Id.*

No Goods on Board.—The underwriters on a policy on goods fraudulently made were within 7 Will. 4 & 1 Vict. c. 89, s. 6, though no goods were put on board. *Reg. v. Wallace*, 2 M. C. C. 200.

Exhibiting False Signals, &c.—By 24 & 25 Vict. c. 97, s. 47, *whosoever shall unlawfully make, alter, or remove any light or signal, or unlawfully exhibit any false light or signal, with intent to bring any ship, vessel, or boat into danger, or shall unlawfully and maliciously do anything tending to the immediate loss or destruction of any ship, vessel, or boat, and for which no punishment is hereinbefore provided, shall be guilty of felony.* (Former provision, 7 Will. 4 & 1 Vict. c. 89, s. 5.)

Removing or Concealing Buoys and other Sea Marks.—By s. 48, *whosoever shall unlawfully and maliciously cut away, cast adrift, remove, alter, deface, sink, or destroy, or shall unlawfully and maliciously do any act with intent to cut away, cast adrift, remove, alter, deface, sink, or destroy, or shall in any manner unlawfully and maliciously injure or conceal any boat, buoy, buoy-rope, perch, or mark used or intended for the guidance of seamen or the purpose of navigation, shall be guilty of felony.*

Destroying Wrecks, or Articles of Ships in Distress.—By s. 49, *whosoever shall unlawfully and maliciously destroy any part of any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore, or any goods, merchandise, or articles of any kind belonging to such ship or vessel, shall be guilty of felony.* (Former provision, 7 Will. 4 & 1 Vict. c. 89, s. 8.)

Damaging otherwise than by Fire.—By s. 46, *whosoever shall unlawfully and maliciously damage, otherwise than by fire, gunpowder, or other explosive substance, any ship or vessel, whether complete or in an unfinished state, with intent to destroy the same, or render the same useless, shall be guilty of felony.* (Former provision, 7 & 8 Geo. 4, c. 30, s. 10.)

— **Indictment.**—An indictment on 7 & 8 Geo. 4, c. 30, s. 10, for damaging a vessel need not have stated that the damage was done "otherwise than by fire," if it stated how it was done. *Rea v. Bowyer*, 4 C. & P. 559.

7. FISH PONDS.

Statute.—By 24 & 25 Vict. c. 97, s. 32, *whoever shall unlawfully and maliciously cut through, break down, or otherwise destroy the dam, floodgate, or sluice of any fish pond, or of any water which shall be private property, or in which there shall be any private right of fishery, with intent thereby to take or destroy any of the fish in such pond or water, or so as thereby to cause the loss or destruction of any of the fish, or shall unlawfully and maliciously put any lime or other noxious material in any such pond or water, with intent thereby to destroy any of the fish that may then be or that may thereafter be put therein, or shall unlawfully and maliciously cut through, break down, or otherwise destroy the dam or floodgate of any mill pond, reservoir or pool, shall be guilty of a misdemeanor.* (Former provision, 7 & 8 Geo. 4, c. 30, s. 15.)

Object to Steal Fish.—The breaking down the head or mound of a fish pond was not a felony within 9 Geo. 1, c. 22, if it appeared to have been the object of the offenders to steal the fish, and not to let them escape through the breach in the mound. *Rea v. Ross*, R. & R. C. C. 10; 2 East, P. C. 1067.

8. TREES, SHRUBS, FENCES, AND VEGETABLES.

Trees and Shrubs.—By 24 & 25 Vict. c. 97, s. 20, *whoever shall unlawfully and maliciously cut, break, bark, root up or otherwise destroy or damage the whole or any part of any tree, sapling or shrub, or any underwood, growing in any park, pleasure-ground, garden, orchard or avenue, or in any ground adjoining or belonging to any dwelling-house (in case the amount of injury done shall exceed the sum of 1l.), shall be guilty of felony.* (Former provision, 7 & 8 Geo. 4, c. 30, s. 19.)

By s. 21, *whoever shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling or shrub, or any underwood, growing elsewhere than in any park, pleasure-ground, garden, orchard or avenue, or in any ground adjoining to or belonging to any dwelling-house (in case the amount of injury done shall exceed the sum of 5l.), shall be guilty of felony.* (Previous enactment, 7 & 8 Geo. 4, c. 30, s. 19.)

Total Destruction Unnecessary.—Cutting down a tree was sufficient to bring the case within 9 Geo. 1, c. 22, although the tree was not thereby totally destroyed. *Rea v. Taylor*, R. & R. C. C. 373.

Where Title to Place in Dispute.—Where shrubs are cut, upon an unproved allegation that they were likely to be injurious to an adjoining wall, it is a malicious trespass, though the title to the spot on which the shrubs grew is in dispute between the parties. *Rea v. Whateley*, 4 M. & R. 431.

Trees, what are.—Apple and pear trees grafted

in a wild stock, and producing fruit, were trees within 9 Geo. 1, c. 22. *Rea v. Taylor*, R. & R. C. C. 373.

Amount of Damage.—A party might be convicted under the 7 & 8 Geo. 4, c. 30, s. 24, of having wilfully and maliciously damaged growing wood, to the value of sixpence, though s. 20 expressly imposed a penalty for unlawfully and maliciously damaging such wood, "the injury done being to the amount of one shilling at least." *Rea v. Dodson*, 9 A. & E. 704.

Indictment—Name of Owner.—In an indictment on 6 Geo. 3, c. 36, for destroying trees, the name of the owner of the trees must have been truly stated, otherwise it was fatal. *Rea v. Patrick*, 2 East, P. C. 1059. And see *Rea v. Howe*, 1 Leach, C. C. 481; 2 East, P. C. 588.

Feloniously.—The prisoner was indicted for damaging apple trees growing in a garden, and the indictment alleged that the damage was done feloniously and not unlawfully or maliciously:—Held, bad. *Rea v. Lewis*, 2 Russ. C. & M. 1066.

Damage, Amount of.—Evidence of damage committed at several times in the aggregate, but not at any one time exceeding 5l., will not sustain an indictment. *Reg. v. Williams*, 9 Cox, C. C. 338.

Amount of Damage.—By s. 22, *whoever shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling or shrub, or any underwood, wheresoever the same may be growing, the injury done being to the amount of 1s. at the least, shall, on conviction thereof before a justice of the peace, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour for any term not exceeding three months, or else shall forfeit and pay, over and above the amount of injury done, such sum of money, not exceeding 5l., as to the justice shall seem meet; and whosoever, having been convicted of any such offence, either against this or any former act of parliament, shall afterwards commit any of the said offences in this section before mentioned, and shall be convicted thereof in like manner, shall for such second offence be committed to the common gaol or house of correction, there to be kept to hard labour for such term, not exceeding twelve months, as the convicting justice shall think fit; and whosoever, having been twice convicted of any such offence (whether both or either of such convictions shall have taken place before or after the passing of this act), shall afterwards commit any of the said offences in this section before mentioned, shall be guilty of a misdemeanor.* (Previous enactment, 7 & 8 Geo. 4, c. 30, s. 20.)

Consequential Injury Insufficient.—A person was indicted under 7 & 8 Geo. 4, c. 30, s. 19, for having feloniously, unlawfully and maliciously done damage to trees in a hedge, thereby doing injury to the owner to an amount exceeding 5l. The evidence shewed that the actual injury done to the trees was to the amount of 1l. only, but that it would be necessary to stub up the old

hedge and replace it, the expense of which would be £l. 14s. The jury found him guilty:—Held, that the conviction was wrong, inasmuch as the injury exceeding 5l. must be actual injury to the trees, and that proof of consequential injury was insufficient. *Reg. v. Whiteman*, Dears. C. C. 353; 6 Cox, C. C. 370; 23 L. J., M. C. 120; 18 Jur. 434.

Vegetables in Gardens.—By s. 23, *whosoever shall unlawfully and maliciously destroy, or damage with intent to destroy, any plant, root, fruit, or vegetable production, growing in any garden, orchard, nursery ground, hothouse, greenhouse or conservatory, shall, on conviction thereof before a justice of the peace, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding six months, or else shall forfeit and pay, over and above the amount of the injury done, such sum of money, not exceeding 20l., as to the justice shall seem meet; and whosoever, having been convicted of any such offence, either against this or any former act of parliament, shall afterwards commit any of the said offences in this section before mentioned, shall be guilty of felony.* (Previous enactment, 7 & 8 Geo. 4, c. 30, s. 21.)

—**Elsewhere.**—By s. 24, *whosoever shall unlawfully and maliciously destroy, or damage with intent to destroy, any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture, and growing in any land, open or inclosed, not being a garden, orchard or nursery ground, shall, on conviction thereof before a justice of the peace, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding one month, or else shall forfeit and pay, over and above the amount of the injury done, such sum of money not exceeding 20s., as to the justice shall seem meet, and in default of payment thereof, together with the costs, if ordered, shall be committed as aforesaid for any term not exceeding one month, unless payment be sooner made.* (Previous enactment, 7 & 8 Geo. 4, c. 30, s. 22.)

By s. 58, malice against the owners of the property injured is unnecessary.

Fences.—By 24 & 25 Vict. c. 97, s. 25, *whosoever shall unlawfully and maliciously cut, break, throw down or in anywise destroy any fence of any description whatsoever, or any wall, stile or gate, or any part thereof respectively, shall, on conviction thereof before a justice of the peace, for the first offence, forfeit and pay, over and above the amount of the injury done, such sum of money, not exceeding 5l., as to the justice shall seem meet.* (Former provision, 7 & 8 Geo. 4, c. 30, s. 23.)

9. HOP-BINDS.

Statute.—By 24 & 25 Vict. c. 97, s. 19, *whosoever shall unlawfully and maliciously cut or otherwise destroy any hop-binds growing on poles in any plantation of hops shall be guilty of*

felony. (Former provision, 7 & 8 Geo. 4, c. 30, s. 18.)

Death of Plant.—In order to support an indictment under 7 & 8 Geo. 4, c. 30, s. 18, for destroying hop-binds, it must be shewn that the plant died in consequence of the injury received. Proof of the infliction of injury by cutting, bruising, &c., is insufficient. *Reg. v. Boucher*; 5 Jur. 709.

10. WORKS OF ART.

Statute.—By 24 & 25 Vict. c. 97, s. 39, *whosoever shall unlawfully and maliciously destroy or damage any book, manuscript, picture, print, statue, bust or vase, or any other article or thing kept for the purposes of art, science or literature, or as an object of curiosity, in any museum, gallery, cabinet, library or other repository, which museum, gallery, cabinet, library or other repository is either at all times or from time to time open for the admission of the public, or of any considerable number of persons, to view the same, either by the permission of the proprietor thereof or by the payment of money before entering the same, or any picture, statue, monument or other memorial of the dead, painted glass or other ornament or work of art, in any church, chapel, meeting-house or other place of divine worship, or in any building belonging to the Queen, or to any county, riding, division, city, borough, poor-law union, parish or place, or to any university, or college or hall of any university, or to any inn of court, or in any street, square, church-yard, burial-ground, public garden or ground, or any statue or monument exposed to public view, or any ornament, railing or fence surrounding such statue or monument, shall be guilty of a misdemeanor.* (Previous enactments, 8 & 9 Vict. c. 44, ss. 1, 4, and 17 & 18 Vict. c. 33, s. 6.)

11. KILLING OR MAIMING CATTLE OR OTHER ANIMALS.

Statute.—By 24 & 25 Vict. c. 97, s. 40, *whosoever shall unlawfully and maliciously kill, maim or wound any cattle shall be guilty of felony.* (Former provision, 7 & 8 Geo. 4, c. 30, s. 16.)

By s. 41, *whosoever shall unlawfully and maliciously kill, maim or wound any dog, bird, beast or other animal, not being cattle, but being either the subject of larceny at common law, or being ordinarily kept in a state of confinement, or for any domestic purpose, shall, on conviction thereof before a justice of the peace, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding six months, or else shall forfeit and pay, over and above the amount of injury done, such sum of money, not exceeding 20l., as to the justice shall seem meet; and whosoever, having been convicted of any such offence, shall afterwards commit any of the said offences in this section before mentioned, and shall be convicted thereof in like manner, shall be committed to the common gaol or house of correction, there to be kept to hard labour for such term not exceeding twelve months, as the convicting justice shall think fit.* (Former provision, 7 & 8 Geo. 4, c. 30, s. 17.)

By s. 58, malice against the owner of the cattle

or other animal injured is unnecessary to be shewn.

Cattle—What are.]—Horses, mares and colts were included in the word "cattle" in 9 Geo. 1, c. 22. *Re v. Patty*, 2 East, P. C. 1074; 1 Leach, C. C. 72; 2 W. Bl. 721; *S. P.*, *Re v. Moyle*, 2 East, P. C. 1076.

So were geldings. *Re v. Mott*, 2 East, P. C. 1075; 1 Leach, C. C. 73, n.

So were pigs. *Re v. Chapple*, R. & R. C. C. 77.

And asses. *Re v. Whitney*, 1 M. C. C. 3.

Maiming or Wounding—What is.]—Wounding a horse out of malice to the owner, by driving a nail into the frog of his hoof, was within 9 Geo. 1, c. 22, though the injury was only temporary. *Re v. Haywood*, 2 East, P. C. 1076; R. & R. C. 16.

Pouring acid into the eye of a mare, and thereby blinding her, was a maiming. *Re v. Owens*, 1 M. C. C. 205.

Injuring a sheep by setting a dog at it was not such a maiming or wounding as was within 4 Geo. 4, c. 54, s. 2. *Re v. Hughes*, 2 C. & P. 420. But see *Elmsley's case*, 1 Lewin, C. C. 126.

If A. set fire to a cow-house and burnt to death a cow which was in it, A. was indictable under 7 & 8 Geo. 4, c. 30, s. 16, for killing the cow. *Re v. Houghton*, 5 C. & P. 559.

In order to constitute a maiming of a horse within 7 & 8 Geo. 4, c. 30, s. 16, it was essential that a permanent injury should have been inflicted on the animal. *Reg. v. Jeans*, 1 C. & K. 539.

Destroying—Poisoning Dogs.]—The placing of poisoned flesh in an inclosed garden, for the purpose of destroying a dog which was in the habit of straying there, is not an offence punishable under 24 & 25 Vict. c. 97, s. 41. *Daniel v. James*, 2 C. P. D. 351.

Seemle, that it is within 27 & 28 Vict. c. 115, s. 2. *Ib.*

Maliciously—What is.]—If a man causes the death of a mare from internal injuries, not intending by his act to kill, maim or wound her, but knowing that the act would or might kill, maim or wound her, and acting recklessly and not caring whether she was injured or not, though without any ill-will or spite either towards the owner of the animal or the animal itself, and without any motive except the gratification of his own depraved tastes, he is guilty of maliciously killing the mare contrary to 24 & 25 Vict. c. 97, s. 40. *Reg. v. Welch*, 1 Q. B. D. 23; 45 L. J., M. C. 17; 33 L. T. 753; 24 W. R. 280; 13 Cox, C. C. 121.

Proof of Malice Unnecessary.]—On an indictment on 7 Will. 4 & 1 Vict. c. 90, s. 2, for maliciously wounding cattle, it was not necessary to prove that the prisoner was actuated by malice against the owner of the cattle. *Reg. v. Tivey*, 1 C. & K. 704; 1 Den. C. C. 63.

A conviction under 7 & 8 Geo. 4, c. 30, s. 16, of unlawfully, maliciously and feloniously wounding a mare, held right. *Ib.*

Indictment—Property in Agister.]—On an indictment for maliciously killing two sheep,

the property in them may be laid to be in the agister. *Re v. Woodward*, 2 East, P. C. 653.

Kind of Cattle.]—An indictment on 9 Geo. 1, c. 22, must have stated the species and sex of cattle wounded or injured; to state that the prisoner maimed certain cattle was not sufficient. *Re v. Chalkley*, R. & R. C. C. 258. See now 24 & 25 Vict. c. 97, s. 60.

Evidence.]—If a prisoner mixed poison with the corn intended for the feed of eight horses, and then gave each horse his feed from this mixture, an indictment, charging that he did administer the poison to the eight horses, is correct. *Re v. Mogg*, 4 C. & P. 363.

Other Cases to shew Intent.]—On an indictment for administering sulphuric acid to eight horses, with intent to kill them, the prosecutor may give evidence of administering, at different times, to shew the intent. *Ib.*

To Improve Appearance.]—But if the jury is satisfied that the offender administered the poison under an idea that it would improve the appearance of the horses, he ought to be acquitted. *Ib.*

Not Necessary to Prove that any Instrument used.]—Upon an indictment under 24 & 25 Vict. c. 97, s. 40, for maliciously wounding a horse, it is not necessary to prove that any instrument was used to inflict the wound. *Reg. v. Bullock*, 1 L. R., C. C. 115; 37 L. J., M. C. 47; 17 L. T. 516; 16 W. R. 405; 11 Cox, C. C. 125.

12. REAL OR PERSONAL PROPERTY TO AMOUNT OF 5*l.*, &c.

Statute.]—By 24 & 25 Vict. c. 97, s. 51, *whosoever shall unlawfully and maliciously commit any damage, injury, or spoil to or upon any real or personal property whatsoever, either of a public or private nature, for which no punishment is hereinbefore provided, the damage, injury, or spoil being to an amount exceeding five pounds, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour; and in case any such offence shall be committed between the hours of nine of the clock in the evening and six of the clock in the next morning, shall be liable, at the discretion of the court, to be kept in penal servitude for five years, or to be imprisoned for any term not exceeding two years, with or without hard labour.*

Maliciously—What is.]—The word "maliciously" in 24 & 25 Vict. c. 97, s. 51, requires that an act to be criminal within that section should be done wilfully. *Reg. v. Pemberton*, 2 L. R., C. C. 119; 43 L. J., M. C. 91; 30 L. T. 405; 22 W. R. 553; 12 Cox, C. C. 607.

A conviction under that section, for unlawfully and maliciously committing damage above the value of 5*l.* to a house, where the person, after fighting in a crowd in the street near the window of the house, separated himself from the crowd, picked up a stone, threw it at one of the persons with whom he had been fighting,

missed his aim, and hit a plate-glass window above the value of 5*l.* in the house, but did not intend to break the window, was quashed. *Id.*

Not applying to Incorporeal Hereditament as Herbage Right.—The soil of a town moor was vested in the corporation of the town in fee, but freemen and widows of deceased freemen of the town were under statute entitled to the "full right and benefit to the herbage" of the town moor for two milch cows:—Held, that this right to the herbage was not "any real or personal property whatsoever" within the meaning of the Malicious Injuries to Property Act (24 & 25 Vict. c. 97), s. 52, which applies only to tangible property and not to a mere incorporeal right. *Lavis v. Eltringham*, 8 Q. B. D. 283; 15 Cox, C. C. 22; 51 L. J., M. C. 13; 46 L. T. 64; 30 W. R. 245; 46 J. P. 230.

Damage to Field by Dog.—Damage done to a field by a poacher's dog in pursuit of game, was not a malicious injury within 7 & 8 Geo. 4, c. 30, s. 23. *Reg. v. Prestnecy*, 3 Cox, C. C. 503.

Reinstating Works after Notice.—By the side of the highway and under the entrance to T.'s premises ran a drain. T. substituted for it a culvert, and by so doing raised the entrance and the part of the highway adjoining it. The surveyor of the highways served T. with a notice to reinstate, alleging that the culvert caused a nuisance to the highway. On his failing to reinstate the highway the surveyor himself removed the culvert, and in doing so broke some of the tiles:—Held, that an information against the surveyor under 24 & 25 Vict. c. 97, s. 52, for malicious injury to property, ought to be dismissed. *Denny v. Thwaites*, 2 Ex. D. 21; 46 L. J., M. C. 141; 35 L. T. 628.

Indictment, Contents of.—In an indictment under 24 & 25 Vict. c. 97, s. 51, for maliciously damaging personal property, the damage exceeding 5*l.*, it is not necessary to allege the value of each article injured, but only that the amount of the damage done to the several articles exceeded 5*l.* aggregately. *Reg. v. Thomas*, 12 Cox, C. C. 54; 24 L. T. 398.

13. INDICTMENT.

Malice Immaterial.—By 24 & 25 Vict. c. 97, s. 58, every punishment and forfeiture imposed by the act on any person maliciously committing any offence, whether the same be punishable upon indictment or upon summary conviction, shall equally apply and be enforced, whether the offence shall be committed from malice conceived against the owner of the property in respect of which it shall be committed or otherwise.

Intent to Injure another.—By s. 59, every provision of this act not hereinbefore so applied shall apply to every person who, with intent to injure or defraud any other person, shall do any of the acts hereinbefore made penal, although the offender shall be in possession of the property against or in respect of which such act shall be done.

By s. 60, it shall be sufficient, in any indictment for any offence against this act, where it shall be necessary to allege an intent to injure or

defraud, to allege that the party accused did the act with intent to injure or defraud, as the case may be, without alleging an intent to injure or defraud any particular person; and on the trial of any such offence it shall not be necessary to prove an intent to injure or defraud any particular person, but it shall be sufficient to prove that the party accused did the act charged with an intent to injure or defraud, as the case may be.

XXV. MISDEMEANORS.

1. Where Evidence proves a Felony.
2. At Common Law.
3. Practice, 423.
4. Attempts to Commit.—See ante, ATTEMPTS TO COMMIT OFFENCES.

1. WHERE EVIDENCE PROVES A FELONY.

Statute.—By 14 & 15 Vict. c. 100, s. 12, *if, upon the trial of any person for any misdemeanor, it shall appear that the facts given in evidence amount, in law, to a felony, such person shall not by reason thereof be entitled to be acquitted of such misdemeanor, and no person tried for such misdemeanor shall be liable to be afterwards prosecuted for felony on the same facts, unless the court, before which such trial may be had, shall think fit, in its discretion, to discharge the jury from giving any verdict upon such trial, and to direct such person to be indicted for felony, in which case such person may be dealt with in all respects as if he had not been put upon his trial for such misdemeanor.*

Felony partly Proved.—Upon an indictment for a misdemeanor, it is no ground for an acquittal that the evidence necessary to prove the misdemeanor also shews it is part of a felony, and that the felony has been completed. *Reg. v. Button*, 3 Cox, C. C. 229.

2. AT COMMON LAW.

Overseer Removing Pauper pending Special Case.—It is not indictable if an overseer, without fraud or menace, remove a pauper under an order, after it has been confirmed, on appeal, by the sessions, subject to the opinion of the Queen's Bench and before its final determination by that court. *Reg. v. Cooper*, 3 New Sess. Cas. 346; 18 L. J., M. C. 16.

Exposing Dead Body in Public Highway.—The prisoner was indicted for unlawfully exposing the dead body of her infant child near a public highway. The jury found that the body was exposed by the prisoner in a public highway; that the place was one where many people were certain to pass and repass; and that the exposure was calculated to shock and disgust passers-by and outrage public decency:—Held, that the prisoner was guilty of a nuisance at common law. *Reg. v. Clark*, 15 Cox, C. C. 171.

Not providing for Burial of Child.—A parent, who has not the means of providing burial for the body of his deceased child, is not liable to be indicted for a misdemeanor in not providing for its burial, even though a nuisance is occasioned by allowing the body to remain unburied,

and although the poor-law authorities of the union have offered him money to defray the expenses of burial, by way of loan, as he is not bound under such circumstances to contract a debt. *Reg. v. Vann*, 2 Den. C. C. 325; T. & M. 632; 21 L. J., M. C. 39; 15 Jur. 1090.

Disinterring and Removing Human Remains from Unconsecrated Burial Ground.]—The defendant was indicted for unlawfully, wilfully, and indecently digging open graves in a burial-ground, and taking and removing parts of the bodies of persons buried therein, and interfering with and offering indignities to the remains of the said bodies. The evidence shewed that the defendant employed persons to excavate for building operations the burial-ground attached to a Nonconformist place of worship, which had been disused as a burial-ground for some time; and the jury found that, in the course of the excavations, bones that formed parts of human remains, and of the same human skeleton, were dug up, but that they were not disturbed in an improper and indecent manner:—Held, that the defendant was guilty of a misdemeanor at common law. *Reg. v. Jacobson*, 14 Cox, C. C. 522. See also XXXIX., SEPULTURE, *infra*.

Attempt to have Carnal Knowledge.]—Attempting to carnally know and abuse a girl between the ages of ten and twelve, if she consented to all that was done, was a misdemeanor. *Reg. v. Martin*, 9 C. & P. 213; 2 M. C. C. 123; S. P., *Reg. v. Johnson*, L. & C. 632; 10 Cox, C. C. 114.

To have Connexion by False Pretences.]—A conspiracy to procure by false pretences, false representations, and other fraudulent means a young girl to have illicit carnal connexion with a man, is a misdemeanor at common law. *Reg. v. Meears*, T. & M. 414; 2 Den. C. C. 79; 20 L. J., M. C. 59; 15 Jur. 66. See 24 & 25 Vict. c. 95.

Procuring Indecent Prints with Intent to Publish.]—It is a misdemeanor to procure indecent prints with intent to publish them. *Dugdale v. Reg. (in error)*, 1 El. & Bl. 425; Dears. C. C. 64; 22 L. J., M. C. 50; 17 Jur. 546.

But to preserve and keep them in possession with such intent is not. *Ib.*

Therefore, where some counts charged that the defendant obtained and procured indecent prints, in order and for the purpose of unlawfully publishing and selling them, and thereby corrupting the public morals, and other counts charged that the defendant unlawfully and knowingly preserved and kept in his possession indecent prints, with the same intent:—Held, that the former counts were good, inasmuch as they charged an act done towards the commission of a misdemeanor; but that the latter counts were bad, inasmuch as they did not charge such an act. *Ib.*

Indecent Exhibition.]—An obscene exhibition in a booth on a racecourse with closed doors, to a number of spectators who have paid for their admission upon the invitation of the keepers of the booth to the general public, is a misdemeanor at common law. *Reg. v. Saunders*, 1 Q. B. D. 15; 45 L. J., M. C. 111; 33 L. T. 677; 24 W. R. 348; 13 Cox, C. C. 116.

Uttering Forged Character.]—Uttering a false testimonial to character, knowing it to be forged, with intent to deceive, and thereby obtaining a situation of emolument, is a misdemeanor at common law. *Reg. v. Sharman*, Dears. C. C. 285; 23 L. J., M. C. 51; 18 Jur. 157.

Administering Noxious Thing.]—Administering cantharides to a woman, with intent to injure her health, was not a misdemeanor at common law. *Reg. v. Hanson*, 4 Cox, C. C. 138; 2 C. & K. 912.

Inciting to Commit Unnatural Offence.]—A count in an indictment charged that the prisoner unlawfully, wickedly, and indecently did write and send to H. a letter, with intent thereby to move and incite H. to attempt and endeavour, feloniously and wickedly, to commit an unnatural offence, and by the means aforesaid did unlawfully attempt and endeavour to incite H. to attempt to commit the crime aforesaid:—Held, that the count charged an indictable misdemeanor. *Reg. v. Ransford*, 31 L. T. 488.

The evidence was, that H. was a boy at school, and that he had received two other letters from the prisoner, which he read, but that when he received the one mentioned in the above count he did not read it, nor was he in any way aware of its contents, but handed it over to the school authorities:—Held, that the sending the letter proved the attempt to incite, although it might be doubtful whether it could be said to amount to inciting or soliciting, inasmuch as H. was not aware of its contents. *Ib.*

Act of Fraud on Public Officer.]—Any one act of fraud upon a public officer, with intent to deceive, whereby a matter required by law for the accomplishment of an act of a public nature is illegally obtained, amounts to an indictable misdemeanor; and it need not be alleged or proved either that the act was in fact accomplished, or that the party, at the time of committing the fraud, intended that it should be. *Reg. v. Chapman*, 2 C. & K. 846; 1 Den. C. C. 432; T. & M. 90; 18 L. J., M. C. 152; 13 Jur. 885.

A false oath taken before a surrogate, with intent to deceive such surrogate, and to obtain from him a licence for a marriage, is punishable as a misdemeanor, although it is not alleged in the indictment, nor proved in evidence, that the marriage was in fact celebrated, and although the party found guilty was not the person about to be married. *Ib.*

False Oath.]—H. was indicted for perjury in an affidavit under the Bills of Sale Act, 1854, for the purpose of getting a bill of sale filed. The affidavit was sworn before a commissioner for taking affidavits in the Court of Queen's Bench:—Held, that this did not constitute perjury, but that he was guilty of taking a false oath, which offence was, under the circumstances, a common-law misdemeanor. *Reg. v. Hodgkiss*, 1 L. R., C. C. 212; 39 L. J., M. C. 14; 21 L. T. 564; 18 W. R. 150.

Suicides and Maiming.]—See *infra*.

Orders made under Statutory Powers, Disobeying.]—By the Epping Forest Amendment Act, 1872 (35 & 36 Vict. c. 95), s. 5, the commissioners were authorized to make orders prohibiting,

until the expiration of the session of parliament next after their final report, any inclosures of land made before the Act of 1871, and for the prevention of any waste, injury or destruction of vert, herbage, trees, &c., in or upon any land within the forest subject in their judgment to any forestal or common rights. The commissioners made an order, that until the expiration of the session of parliament next after their final report, "all persons be and are hereby prohibited from committing any waste, &c., in or upon the waste lands in the forest within the manor of Theydon Bois (including inclosures of waste lands made within twenty years next preceding the 21st of August, 1871), all which lands are distinguished on a plan annexed, by the colour green." The defendant was the occupier, as tenant, of a piece of land, part of the above waste lands, which was inclosed some time since 1851, and was part of the land coloured green on the plan, and persons claimed right of pasturage over all the waste lands. The order was served upon him, and he afterwards committed waste by digging marl and clay, upon which an indictment was preferred against him for disobeying the order. A verdict of guilty having been entered:—Held, that the order was good, and that disobedience to it was a misdemeanor at common law. *Reg. v. Walker*, 10 L. R., Q. B. 355; 44 L. J., M. C. 167; 33 L. T. 167.

3. PRACTICE.

Power of Queen's Bench to enter Verdict for Defendant.]—Where a misdemeanor is tried in the Queen's Bench Division, and a verdict of guilty has been found, the court has power on motion to enter a verdict for the defendant. *Reg. v. Platts*, 28 W. R. 915.

XXVI. MURDER, MANSLAUGHTER, AND OFFENCES AGAINST THE PERSON.

- A. Murder and Manslaughter.
- B. Assault, Battery, Wounding, &c.
- C. Abortion, Attempts to Procure.
- D. Rape, and Assaults on Women and Children.

A. MURDER AND MANSLAUGHTER.

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1. STATUTE.

By 24 & 25 Vict. c. 100, s. 1, *whosoever shall be convicted of murder shall suffer death as a felon*.

By s. 8, *every offence which, before the commencement of 9 Geo. 4, c. 31, would have amounted to petit treason, shall be deemed to be murder only, and no greater offence; and all persons guilty in respect thereof, whether as principals or as accessories, shall be dealt with, indicted, tried and punished as principals and accessories in murder*.

By 24 & 25 Vict. c. 100, s. 7, *no punishment or forfeiture shall be incurred by any person who shall kill another by misfortune, or in his own defence, or in any other manner without felony*.

2. UNLAWFUL KILLING.

Killing—What is.]—A husband seized his wife, a heavy, corpulent woman, and dashed her violently on the brick floor of a kitchen, and then struck her with the tongs on her thigh, inflicting a severe bruise, but no injury in itself fatal. She languished ten days, during which she, at his desire, and in effect driven away by him, sought shelter at a friend's, where, at the end of that time, she died; he providing no medical aid, and no doctor visiting her until the day before her death, when it was too late. The medical evidence shewed that she was diseased, but that she might have lived for an indefinite period; and that the effect of the whole of the violence was to hasten her death, by a shock to the nervous system calculated to aggravate the disease:—Held, that if this was so he was guilty of manslaughter. *Reg. v. Murton*, 3 F. & F. 492.

—Injury causing Medical Treatment Necessary—Death resulting during an Operation.]—When an injury was inflicted on a person by a blow which, in the judgment of a competent medical man, rendered an operation advisable, and, as a preliminary to the operation, chloroform was administered to the patient, who died during its administration, and it was agreed that the patient would not have died but for its administration:—Held, that the person causing the injury was liable to be indicted for manslaughter. *Reg. v. Davis*, 15 Cox, C. C. 174.

—Refusal to submit to Operation.]—Where

a wound is wilfully, and without justifiable cause, inflicted, and ultimately becomes the cause of death, the party who inflicted it is guilty of murder, though life might have been preserved if the deceased had not refused to submit to a surgical operation. *Reg. v. Holland*, 2 M. & Rob. 351.

— **Death caused by Fright.**—When A., in unlawfully assaulting B., who at that time had in her arms an infant, so frightened the infant that it had convulsions, although previously healthy, and from the effects of which it eventually died in about six weeks. A. is guilty of manslaughter, if the jury thinks that the assault on B. was the direct cause of death. *Reg. v. Towers*, 12 Cox, C. C. 530.

— **Death caused by Apprehension of Violence.**—If a person being attacked should, from an apprehension of immediate violence—an apprehension which must be well grounded and justified by the circumstances—throw himself for escape into a river, and be drowned, the person attacking him is guilty of murder. *Reg. v. Pitts*, Car. & M. 284.

Forcing a person to do an act which is likely to produce his death, and which does produce it, is murder. *Reg. v. Evans*, 1 Russ. C. & M. 676.

And threats may constitute such force. *Id.*

— **Falsely charging Person with Capital Offence.**—A person cannot be indicted for murder in procuring another to be executed by falsely charging him with a crime of which he was innocent. *Reg. v. Maedaniel*, 1 Leach, C. C. 44; 1 East, P. C. 333.

— **Unlawful Acts—What are.**—Accidental homicide may be murder, if it happens in the prosecution of any illegal act; as in carrying away furniture to avoid a distress for rent. *Reg. v. Hodgson*, 1 Leach, C. C. 6; *S. C.*, nom. *Reg. v. Hubson*, 1 East, P. C. 258.

— **Not Providing Medical Aid.**—By 31 & 32 Vict. c. 122, s. 37, when any parent shall wilfully neglect to provide medical aid for his child, being in his custody and under the age of fourteen years, whereby the health of such child shall be seriously injured, he is guilty of an offence punishable summarily before justices. Since that statute, if from a conscientious religious conviction that in answer to prayer God would heal the sick, and in obedience to the tenets of a sect called the Peculiar People, and not from any intention to avoid the performance of his duty to his child or to break the law, the parent of a sick child, being one of such sect, while furnishing it with all necessary food and nourishment, refuses to call in medical aid, though well able to do so, and the child, in the opinion of the jury, dies from not having such medical aid, it is manslaughter. *Reg. v. Downes*, 1 Q. B. D. 8; 45 L. J., M. C. 8; 33 L. T. 675; 24 W. R. 278; 13 Cox, C. C. 111.

— **Caused by Unlawful Assembly.**—If persons assemble to obstruct the officers of the law, all so assembling are guilty of an unlawful assembly, whether a riot takes place or not, and if a homicide be committed in consequence of that unlawful assembly, every one taking part in

the unlawful assembly may be personally responsible for the homicide. *Reg. v. McNaughten*, 14 Cox, C. C. 576.

— **Whilst Playing at Football.**—If, while engaged in a friendly game, one of the players commits an unlawful act whereby death is caused to another, he is guilty of manslaughter. In such a case it is immaterial to consider whether the act which caused the death was in accordance with the rules and practice of the game. The act would be unlawful if the person committing it intended to produce serious injury to another, or if, committing an act which he knows may produce serious injury, he is indifferent and reckless as to the consequences. *Reg. v. Bradshaw*, 14 Cox, C. C. 83.

— **Playing.**—A drunken man went into a shop, and in a joke seized a boy round the neck, and began spinning him round until they got together into the street. The boy having at length broken away, the prisoner, in consequence, staggered into the road, and fell against a woman who was passing, knocking her down; she shortly after died of the injuries which she had received. The boy made no resistance to the prisoner's treatment of him, believing that it was merely done in play.—Held, that there was no evidence of manslaughter. *Reg. v. Bruce*, 2 Cox, C. C. 262.

— **Kicking out Trespasser.**—A kick is not a justifiable mode of turning a man out of your house, though he is a trespasser; therefore, if it causes death, it is manslaughter. *Wild's case*, 2 Lewin, C. C. 214.

— **Command to kill Person.**—He who kills another upon his desire or command, is, in the judgment of the law, as much a murderer as if he had done it merely of his own head. *Reg. v. Sawyer*, 1 Russ. C. & M. 670.

— **By Firing Buildings or Stacks.**—Where a person indicted for murder had wilfully set fire to a stack of straw, close to an out-house or a barn, in an inclosure not adjoining to a dwelling-house, and the deceased was burnt to death, either in the out-house or on or by the side of the stack:—Held, that he was not guilty of murder, unless the deceased was there when he set fire to the stack. *Reg. v. Horsey*, 3 F. & F. 287.

— **Causing Death by Excessive Drink.**—An indictment stated that the prisoners gave, administered and delivered to A. large and excessive quantities of spirits and water, wine and porter, and induced, procured and persuaded him to drink them, being likely to cause death, which they well knew. The deceased was a man in possession under the sheriff, and one of the prisoners, of whose goods he was in possession, assisted by his brother and a friend, plied the man with liquor, themselves drinking freely also, and when he was very drunk put him into a cabriolet, and caused him to be driven about the streets; and about two hours after he had been put into the cabriolet he was found dead:—Held, that, if it was essential to prove that the prisoners knew that the liquors were likely to cause death, the case would be one of murder and not of manslaughter, but that such allega-

tion was not a material part of the indictment, but might be dismissed from the jury's consideration. *Reg. v. Packard*, Car. & M. 236.

Held, also, that if the prisoners, when the deceased was drunk, put him into a cabriolet and drove him about in order to keep him out of possession, and by so doing accelerated his death, it would be manslaughter. *Ib.*

Killing by Persons having Charge of Helpless Beings.—A grown-up person who chooses to undertake the charge of a human creature helpless either from infancy, simplicity, lunacy or other infirmity, is bound to execute that charge without wicked negligence; and if such person by wicked negligence lets the helpless creature die, that person is guilty of manslaughter. *Reg. v. Nicholls*, 13 Cox, C. C. 75.

Mere negligence is not enough; there must be negligence so great as to satisfy a jury that the person had a wicked mind, in the sense of being reckless and careless whether death occurred or not. *Ib.*

Where a man and his wife are living apart by mutual consent, he granting her a fixed allowance, which is regularly paid, he is not *prima facie* bound to supply her with shelter; but if he is made acquainted with the fact that she is without shelter, and refuses to provide her with it, in consequence of which her death ensues, semble, that he is guilty of manslaughter. *Reg. v. Plummer*, 1 C. & K. 600; 8 Jur. 921.

On the trial of an indictment against a woman for the manslaughter of her new-born child, the evidence went to prove that the child had dropped from her whilst she was on the privy, and that it had been smothered in the soil:—Held, that if the jury was of opinion that after it had been born the mother had the power of procuring such assistance as might have saved the child's life, and she neglected to procure it, she was guilty of manslaughter. *Reg. v. Middleship*, 5 Cox, C. C. 275.

On an indictment against a woman for the wilful murder of her new-born child, she is guilty of murder if either before or after the birth of the child she makes up her mind that it shall die, and the child being born alive, she, with the intent that it shall die, leaves it to die, and it does die in consequence. Or again, she is guilty of murder, if without intending murder she resolves to conceal the birth of the child by methods which will probably end in its death, and which being carried out do end in its death. *Reg. v. Handley*, 13 Cox, C. C. 79.

She is guilty of manslaughter if, without having made up her mind that the child shall die, she determines to be alone at the birth, for the purpose of temporary concealment, and the child afterwards dies by reason of her wicked negligence. *Ib.*

A father is not justified in correcting an infant of two years of age, and if he does so and the infant dies therefrom, he is guilty of manslaughter. *Reg. v. Griffin*, 11 Cox, C. C. 402.

It is a misdemeanor to refuse or neglect to provide sufficient food or other necessities for any infant of tender years, unable to provide for and take care of itself (whether such infant is a child, an apprentice, or a servant whom the party is obliged by duty or contract to provide for), so as thereby to injure his health. *Reg. v. Friend*, R. & R. C. C. 20. And see *Reg. v. Squire*, 1 Russ. C. & M. 80, 678.

A single woman, the mother of an infant child, was indicted for neglecting to provide it with sufficient food, the indictment alleging that she was able, and had the means so to do. There was no evidence of the actual possession of means by the mother; but it was proved that she could have applied to the relieving officer of the union, and that if she had so applied, she would have been entitled to and would have received relief adequate to the due support and maintenance of herself and child:—Held, that the allegation in the indictment was not supported by this evidence. *Reg. v. Chandler*, Dears. C. C. 453; 3 C. L. R. 680; 24 L. J., M. C. 109; 1 Jur., N. S. 429.

If parents have not the means of providing proper food and nourishment for their infant children who are incapable of taking care of themselves, it is their duty to apply for the assistance provided by means of the poor laws. *Reg. v. Mabbett*, 5 Cox, C. C. 339.

A married woman who, having a child under such circumstances, wilfully neglects for several days going to the union for the purpose of getting support for it, she knowing that such neglect is likely to cause the child's death, is guilty of manslaughter. *Ib.*

Where any person undertaking the duty of supplying an infant with proper food and clothing, and furnished with the means of discharging that duty properly, wilfully neglects to do so, with an intention to cause the death of the child, or to do it some grievous injury, and the child dies in consequence of such neglect, such person is guilty of murder. Where the neglect is culpable only, and not malicious, such person is guilty of manslaughter. Where a parent supplies sufficient food and clothing to another for the purpose of administering to his child, and that other person wilfully withholds it from the child, and the parent is conscious that it is so withheld, and does not interfere, and the child dies for want of proper food and clothing, the parent is guilty of manslaughter. *Reg. v. Bubb*, 4 Cox, C. C. 455.

A married woman cannot be convicted of the murder of her illegitimate child three years old, by omitting to supply it with proper food, unless it is shewn that her husband supplied her with food to give to the child, and that she wilfully neglected to give it. *Reg. v. Saunders*, 7 C. & P. 277.

A count charged a married woman with the murder of her illegitimate child of three years old, by omitting to supply it with sufficient food, and also by heating; it was not shewn that her husband had supplied her with food to give to the child:—Held, that this count could not be supported. *Ib.*

An indictment alleged in a first count that the prisoner unlawfully and wilfully neglected and refused to provide sufficient food for her infant child, she being able and having the means to do so. The second count charged that she unlawfully and wilfully neglected and refused to provide her infant child with necessary food, but there was no allegation that she had the ability or means to do so. The jury found a verdict of guilty, on the ground that if she had applied (to the guardians) for relief she would have had it:—Held, that neither count was proved, as it was not enough that she could have obtained the food on application to the guardians. *Reg. v. Rugg*, 12 Cox, C. C. 16; 24 L. T. 192.

An indictment against a woman for man-

slaughter, in neglecting to supply an infant of tender age with sufficient food, is bad, if it does not state a duty to supply the child with food; but, if the indictment charges that the person not supplied with food was imprisoned by the party accused, that sufficiently shews the duty to supply food. *Reg. v. Edwards*, 8 C. & P. 611.

A. was convicted of the manslaughter of an infant female child, on an indictment which stated the death to have been caused by exposure, whereby the child became mortally chilled, frozen, and benumbed:—Held, that as the death was attributable to an act of misfeasance, it was necessarily implied that the child was of such tender age and feebleness as to be incompetent to take care of herself. *Reg. v. Waters*, T. & M. 57; 1 Den. C. C. 356; 2 C. & K. 864; 18 L. J., M. C. 53; 13 Jur. 130.

Who Liable for—Inspector or Foreman.]—Where a fatal railway accident had been caused by the train running off the line, at a spot where rails had been taken up, without allowing sufficient time to replace them, and also without giving sufficient, or, at all events, effective warning to the engine-driver; and it was the duty of the foreman of plate-layers to direct when the work should be done, and also to direct effective signals to be given:—Held, that though he was under the general control of an inspector of the district, the inspector was not liable, but that the foreman was, assuming his negligence to have been a material and a substantial cause of the accident, even although there had also been negligence on the part of the engine-driver in not keeping a sufficient look-out. *Reg. v. Bengel*, 4 F. & F. 504.

—Engine Set in Motion during Absence.]—A party having the charge of a steam-engine, stopped it and went away; another party came and set it in motion, whereby a person was killed:—Held, that the party who went away was not the party by whose negligence the death was caused, and therefore he was not guilty of manslaughter. *Hilton's case*, 2 Lewin, C. C. 214.

—Master or Servants.]—B. was a person who made fireworks, contrary to 9 & 10 Will. 3, c. 7. He kept a quantity of combustibles at his house, for the purpose of his business, as a maker of fireworks; and during his absence, through the negligence of his servants, a fire broke out amongst such combustibles, and a rocket becoming thereby ignited flew across a street, setting fire to a house opposite, caused the death of a person therein:—Held, that a conviction of manslaughter was wrong, as the death was not occasioned by the unlawful act of B., but by the negligence of his servants. *Reg. v. Bennett*, Bell, C. C. 1; 8 Cox, C. C. 74; 28 L. J., M. C. 27; 4 Jur., N. S. 1088; 32 L. T., O. S. 110; 7 W. R. 40.

—By Soldiers in the Exercise of their Profession.]—A gun discharged in the ordinary and regular course of ball practice by an artilleryman in a garrison town, missed the mark, and killed a man who was lawfully passing near the spot in a boat, the place being a public one, and open to all her Majesty's subjects. The artilleryman who fired the gun was acting under the command of a superior officer, who was

acting in obedience to the general orders of the major-general:—Held, that the major-general was not guilty of manslaughter. *Reg. v. Hutchinson*, 9 Cox, C. C. 555. *But see* 3 Russ. C. & M. 660.

3. REASONABLE CREATURE IN BEING.

Child Born Alive.]—To justify a conviction on an indictment charging a woman with the wilful murder of a child of which she was delivered, and which was born alive, the jury must be satisfied affirmatively that the whole body was brought alive into the world; and it is not sufficient that the child has breathed in the progress of the birth. *Rea v. Poulton*, 5 C. & P. 329; *S. P.*, *Rea v. Enoch*, 5 C. & P. 539.

A prisoner was charged with the murder of her new-born child, by cutting off its head:—Held, that in order to justify a conviction for murder, the jury must be satisfied that the entire child was actually born into the world in a living state; and that the fact of its having breathed is not a decisive proof that it was born alive, as it may have breathed, and yet died before birth. *Rea v. Sellis*, 7 C. & P. 850.

On a charge of child-murder, it appeared that the child must have died before it had an independent circulation:—Held, that as the child had never had an independent circulation, the charge of murder could not be sustained. *Reg. v. Wright*, 9 C. & P. 754.

Separation from Mother.]—If a child has been wholly produced from the body of its mother, and she wilfully, and of malice aforethought, strangles it while it is alive and has an independent circulation, this is murder, although the child is still attached to its mother by the umbilical cord. *Reg. v. Trilloe*, Car. & M. 650; 2 M. C. C. 260.

A child is born alive when, breathing and living by reason of breathing through its own lungs alone, it exists as a live child without deriving any of its living or power of living by or through any connexion with its mother. *Reg. v. Handley*, 13 Cox, C. C. 79.

Child en ventre sa Mère.]—An unskilful practitioner of midwifery wounded the head of a child before the child was perfectly born. The child was afterwards born alive, but subsequently died of this injury:—Held, manslaughter, although the child was en ventre sa mère at the time when the wound was given. *Rea v. Senior*, 1 M. C. C. 344; 1 Lewin, C. C. 183, n.

Child Born Earlier than Natural—Less Capable of Living.]—If a person intending to procure abortion does an act which causes a child to be born so much earlier than the natural time, that it is born in a state much less capable of living, and afterwards dies in consequence of its exposure to the external world, the person who by this misconduct so brings the child into the world, and puts it thereby in a situation in which it cannot live, is guilty of murder, and the mere existence of a possibility that something might have been done to prevent the death would not render it less murder. *Reg. v. West*, 2 C. & K. 784; 2 Cox, C. C. 500.

Before Birth—No Necessary Precautions.]—A woman who knows she is to be confined, and

who wilfully abstains from taking the necessary precautions to preserve the life of the child after its birth, in consequence of which the child dies, is not guilty of manslaughter. *Reg. v. Knights*, 2 F. & F. 46.

4. MALICE, EXPRESS OR IMPLIED.

a. Generally.

Manslaughter is homicide, not under the influence of malice. *Reg. v. Taylor*, 2 Lewin, C. C. 215.

If persons cover another with straw and set fire to it, intending to do him a serious injury, and he dies, it is murder, though they did not intend to kill him. But if they intended the act in sport, and merely to frighten him, it is manslaughter. *Errington's case*, 2 Lewin, C. C. 217.

If two persons mutually agree to commit suicide together, and the means employed to produce death only take effect on one, the survivor will, in point of law, be guilty of the murder of the one who died. *Reg. v. Alison*, 8 C. & P. 418.

If a woman takes poison with intent to procure a miscarriage, and dies of it, she is guilty of self-murder, whether she was quick with child or not; and the person who furnished her with the poison for that purpose, will, if absent when she took it, be an accessory before the fact only. *Reg. v. Russell*, 1 M. C. C. 356.

A., at the instigation of a woman who was pregnant by him, and influenced by her threats of self-destruction if the means of procuring abortion were not supplied to her, procured some corrosive sublimate, and handed it to the woman, who took it and died from its effects. He was not present when the poison was taken by the woman. He was indicted for murder. The jury negatived the fact of his having administered the poison, or caused it to be taken by the woman, but said that he delivered it to her with the full knowledge of the purpose to which she intended to apply it:—Held, that he was not guilty of murder. *Reg. v. Fretwell*, 9 Cox, C. C. 152; L. & C. 161; 31 L. J., M. C. 145; 8 Jur., N. S. 466; 6 L. T. 333; 10 W. R. 545. *But see* now 24 & 25 Vict. c. 100, ss. 58, 59.

If two encourage each other to murder themselves together, and one does so, but the other fails in the attempt upon himself, he is a principal in the murder of the other. *Reg. v. Dyson*, R. & R. C. C. 523.

But if it is uncertain whether the deceased really killed himself, or whether he came to his death by accident before the moment when he meant to destroy himself, it will not be murder in either. *Id.*

b. By Poison or Operations.

What Skill required.—A medical man is bound to use proper skill and caution in dealing with a poisonous drug or a dangerous instrument, and if he does not do so, and death ensues, he is guilty of manslaughter; aliter, if it is want of skill arising from mere error of judgment. *Reg. v. Macleod*, 12 Cox, C. C. 534.

Any person, whether a licensed medical practitioner or not, who deals with the life or health of any of his Majesty's subjects, is bound to have competent skill; and is bound to treat his or her

patients with care, attention, and assiduity; and if a person dies for want of either, the person is guilty of manslaughter. *Reg. v. Spiller*, 5 C. & P. 333. See *Reg. v. Simpson*, 1 Lewin, C. C. 172; *Reg. v. Ferguson*, 1 Lewin, C. C. 181.

If a person, bonâ fide and honestly exercising his best skill to cure a patient, performs an operation which causes the patient's death, he is not guilty of manslaughter; and it makes no difference whether such person is a regular surgeon or not, nor whether he has had a regular medical education or not. *Reg. v. Van Butchell*, 3 C. & P. 629.

Gross Misconduct and Rashness.—A person in the habit of acting as a man mid-wife, tearing away part of the prolapsed uterus of one of his patients, supposing it to be a part of the placenta, by means of which the patient dies, is not indictable for manslaughter, unless he is guilty of criminal misconduct arising either from the grossest ignorance or from the most criminal inattention. *Reg. v. Williamson*, 3 C. & P. 635.

A person acting as a medical man, whether licensed or unlicensed, is not criminally responsible for the death of a patient, occasioned by his treatment, unless his conduct is characterized either by gross ignorance of his art, or by gross inattention to his patient's safety. *Reg. v. St. John Long*, 4 C. & P. 398.

Where a person, undertaking the cure of a disease (whether he has received a medical education or not), is guilty of gross negligence in attending his patient after he has applied a remedy, or of gross rashness in the application of it, and death ensues in consequence of either, he is liable to be convicted of manslaughter. *Reg. v. St. John Long*, 4 C. & P. 423.

Where a person, grossly ignorant of medicine, administers a dangerous remedy to one labouring under a disease, proper medical assistance being at the time procurable, and that dangerous remedy causes death, the person so administering it is guilty of manslaughter. *Reg. v. Webb*, 1 M. & Rob. 405; 2 Lewin, C. C. 196.

If a medical man, though lawfully qualified to practise as such, causes the death of a person by the grossly unskilful, or the grossly incautious use of a dangerous instrument, he is guilty of manslaughter. *Reg. v. Spilling*, 2 M. & Rob. 107.

The application by an ignorant person of a corrosive sublimate which caused death, is evidence for the jury on an indictment for manslaughter, the question being, under all the circumstances, whether he acted with criminal inattention and carelessness. *Reg. v. Crook*, 1 F. & F. 521.

Where a person, not a regular practitioner, administers lobelia, a dangerous medicine, which produces death, the question for the jury is, under all the circumstances, whether he has acted so rashly and carelessly as to cause the death. *Reg. v. Crick*, 1 F. & F. 519.

An unskilled practitioner who ventures to prescribe dangerous medicines, of the use of which he is ignorant, shews culpable rashness, for which he will be responsible. *Reg. v. Markuss*, 4 F. & F. 356.

On an indictment for manslaughter against a medical man, for administering poison by mistake for some other drug, the prosecution is bound to shew that the poison got into the mixture in consequence of his gross negligence, and it is not

sufficient to shew merely that the prisoner, who dispensed his own drugs, supplied a mixture which contained a large quantity of poison. The jury must be satisfied that there was such gross and culpable negligence as would shew an evil mind. *Reg. v. Spencer*, 10 Cox, C. C. 525.

There must be a competent knowledge and care in dealing with a dangerous drug. If a person is ignorant of the nature of the drug he uses, or is guilty of gross want of care in the use of it, he will be criminally responsible for the consequences. *Reg. v. Chamberlain*, 10 Cox, C. C. 486.

A person, professing himself to be a herbalist, administered arsenical ointment to a woman having a tumour, of which she died. He gave her no caution or directions as to the use of it. The judge directed the jury, that if he administered the arsenic without knowing or taking the pains to find out what its effects would be; or if, knowing this, he gave it to the deceased to be used by her without giving her adequate directions as to its use, he would be guilty of culpable negligence, and therefore of manslaughter. *Id.*

A mistake on the part of a chemist in putting a poisonous liniment into a medicine bottle, instead of a liniment bottle, in consequence of which the liniment was taken by his customer internally, with fatal results, the mistake being made under circumstances which rather threw the prisoner off his guard, does not amount to such criminal negligence as will warrant a conviction for manslaughter. *Reg. v. Noakes*, 4 F. & F. 920.

Quantity of Poison administered.]—A medical man who administered to his mother for some disease prussic acid, of which she almost immediately died, is not guilty of manslaughter, it not appearing distinctly what the quantity was which he had administered, or what quantity would be too great to be administered with safety to life. *Reg. v. Bull*, 2 F. & F. 201.

c. By Fighting.

In Duelling—Mere Presence, whether Sufficient.]—When, upon a previous agreement, and after there has been time for the blood to cool, two persons meet with deadly weapons, and one of them is killed, the party who occasions the death is guilty of murder, and the seconds also are equally guilty; and with respect to others shewn to be present, the question is, did they give their aid and assistance by their countenance and encouragement of the principals in the contest? Mere presence will not be sufficient; but if they sustain the principals, either by advice or assistance, or go to the ground for the purpose of encouraging and forwarding the unlawful conflict, although they do not say or do anything, yet, if they are present assisting and encouraging by their presence at the moment when the fatal shot is fired, they are, in law, guilty of the crime of murder. *Reg. v. Young*, 8 C. & P. 644.

Where two persons go out to fight a deliberate duel, and death ensues, all persons who are present, encouraging and promoting that death, will be guilty of murder. And the person who acted as the second of the deceased person in such a duel may be convicted of murder, on an indictment charging him with being present, aiding and abetting the person by whose act

the death of his principal was occasioned. *Reg. v. Cuddy*, 1 C. & K. 210.

Excessive Force used.]—Where there had been mutual blows, and then upon one of the parties being pushed down on the ground, the other stamped upon his stomach and belly with great force, and thereby killed him, it was considered only to be manslaughter. *Reg. v. Ayes*, R. & R. C. C. 166. But in *Reg. v. Thorpe* (1 Lewin, C. C.), Bayley, J., intimated that death caused by up-and-down fighting would be murder.

If two persons fight, and one overpowers the other, and knocks him down, and puts a rope round his neck and strangles him, this will be murder. *Reg. v. Shaw*, 6 C. & P. 372.

Deadly Weapon used.]—If, after an interchange of blows on equal terms, one of the parties, on a sudden and without any such intention at the commencement of the affray, snatches up a deadly weapon and kills the other party with it, such killing will only amount to manslaughter. *Reg. v. Anderson*, 1 Russ. C. & M. 731.

If, on any sudden quarrel, blows pass without any intention to kill or injure any one materially, and in the course of the scuffle, after the parties are heated by the contest, one kills the other with a deadly weapon, it is only manslaughter. *Reg. v. Snow*, 1 Leach, C. C. 151; 1 East, 244. And see *Reg. v. Taylor*, 5 Burr. 2792.

Use of Deadly Weapon intended from the first.]—But if a party, under colour of fighting upon equal terms, uses from the beginning of the contest a deadly weapon without the knowledge of the other party, whom he kills with such weapon; or if at the beginning of the contest he prepares a deadly weapon, so as to have the power of using it in some part of the contest, and accordingly does so and kills the other party; the killing in both these cases will be murder. *Reg. v. Whiteley*, 1 Lewin, C. C. 173.

If a person, being in possession of a deadly weapon, enters into a contest with another, intending at the time to avail himself of it, and in the course of the contest actually uses it, and kills the other, it will be murder; but if he did not intend to use it when he began the contest, but used it in the heat of passion, in consequence of an attack made upon him, it will be manslaughter. If he uses it to protect his own life, or to protect himself from such serious bodily harm as would give him a reasonable apprehension that his life was in immediate danger, having no other means of defence, and no means of escape, and retreating as far as he can, it will be justifiable homicide. *Reg. v. Smith*, 8 C. & P. 160.

If, before the conflict began, the party had drawn his knife in cool blood, in case death had ensued, the offence would have been murder. *Reg. v. Kessel*, 1 C. & P. 437.

Deadly Weapon used after Running Away.]—If two persons quarrel and begin to fight on even terms, where one, finding himself not equal to his adversary, runs away, and being pursued, draws his knife, and when overtaken by his adversary, stabs him; if death ensues, this would be only manslaughter. *Id.*

Deadly Weapon used after Feigned Reconciliation.]—If a man, after receiving a blow, feigns a reconciliation, and, after the lapse of a few minutes, invites a renewal of the aggression, with intent to use a deadly weapon, and, on such renewal, uses such weapon with deadly effect, there is evidence of implied malice to sustain the charge of murder. *Reg. v. Selten*, 11 Cox, C. C. 674.

But if, after such reconciliation, the aggressor renews the contest, or attempts to do so, and the other, having a deadly weapon about him, on such sudden renewal of the provocation, uses it without previous intent to do so, there is evidence which may reduce the crime to manslaughter. *Ib.*

Death of Third Party on Interfering.]—A. was fighting with his brother; and, to prevent this, B. laid hold of A., and held him down upon a locker on board the barge in which they were, but struck no blow. A. stabbed B. :—Held, that if B. did nothing more than was sufficient to prevent A. from beating his brother, and had died of this stab, the offence of A. would have been murder; but that if B. did more than was necessary to prevent the beating of A.'s brother, it would have been manslaughter only. *Reg. v. Bourne*, 5 C. & P. 120.

d. Upon Provocation.

General Principles.]—The killing a person in an affray, by another who was in a violent heat and passion at the time, will not amount to murder, but manslaughter. *Reg. v. Rankin*, R. & R. C. C. 43.

If a blow without provocation is wilfully inflicted, the law infers that it was done with malice aforethought, and if death ensues, the offender is guilty of murder, although the blow may have been given in a moment of passion. *Reg. v. Noon*, 6 Cox, C. C. 137.

Revenge Disproportionate.]—As an assault, though illegal, will not reduce the crime of the party killing the person assaulting him to manslaughter, when the revenge is disproportionate and barbarous, much less will such personal restraint and coercion as one man may lawfully use towards another form any ground of extenuation. *Reg. v. Willoughby*, 1 East, P. C. 288.

Intention to Kill with Deadly Weapon.]—When a person has killed another with a deadly weapon, even upon sudden passion, the question as to the sufficiency of provocation to reduce the crime to manslaughter, is not merely whether there was passion in point of fact, but whether there was such provocation as might naturally kindle ungovernable passion in the mind of any ordinary and reasonable man. *Reg. v. Welsh*, 11 Cox, C. C. 336.

Where there is the intention to kill (as shewn by the use of a deadly weapon and the infliction of a fatal blow in a mortal part), and there is absence of such serious provocation as might naturally kindle ungovernable passion in the mind of a reasonable man, the crime is murder. *Ib.*

If a person receives a blow, and immediately avenges it with any instrument he may happen to have in his hand, and death ensues, this will be only manslaughter, provided the fatal blow is

to be attributed to the passion of anger arising from the previous provocation. *Reg. v. Thomas*, 7 C. & P. 817.

Where Provocation only Slight.]—It is not every slight provocation, even by a blow, which will, when the party receiving it strikes with a deadly weapon and death ensues, reduce the crime from murder to manslaughter. *Reg. v. Lynch*, 5 C. & P. 324.

The prisoner having, after a trifling and casual altercation, sustained several blows from the deceased (a stranger to him), instantly stabbed him with a clasp knife he had about him :—Held, that it was for the jury, whether or not the blow was struck in the heat of sudden passion, without previous malice, so as to reduce the offence to manslaughter. *Reg. v. Eagle*, 2 F. & F. 827.

Where one having had his pockets picked, seized the offender, and being encouraged by a concourse of people, threw him into an adjoining pond by way of avenging the theft by ducking him, but without any apparent intention of taking away his life, and the pickpocket was drowned :—Held, that it only amounted to manslaughter. *Reg. v. Fray*, 1 East, P. C. 236.

Such provocation must be something serious, as a blow; and mere words, or gestures, not accompanied with anything of such a serious character, will not in point of law, be sufficient to reduce the crime to manslaughter. *Reg. v. Welsh*, 11 Cox, C. C. 336.

— Insulting Words in Addition.]—An assault, too slight in itself to be a sufficient provocation to reduce murder to manslaughter, may become sufficient for that purpose when coupled with words of great insult. *Reg. v. Smith*, 4 F. & F. 1066.

Killing Wife caught in Adultery.]—If a man finds his wife in the act of committing adultery, and kills her, this will be but manslaughter only; but if a man takes away the life of a woman, even his own wife, because he suspects, however strongly, that she has been engaged in some illicit intrigue, this will be murder. *Reg. v. Kelley*, 2 C. & K. 814.

If a man kills his wife, or the adulterer, in the act of adultery, it is manslaughter, and not murder. *Pearson's case*, 2 Lewin, C. C. 216.

Wife's Father Killing Husband.]—A father struck a fatal blow at the husband under the impulse of strong resentment, caused by seeing his daughter violently assaulted by her husband, although not in a manner to endanger her life :—Held, that this might be a ground upon which the offence of murder might be reduced to that of manslaughter. *Reg. v. Harrington*, 10 Cox, C. C. 370.

Killing Person committing Offence on Son.]—If a father sees a person in the act of committing an unnatural offence with his son, and instantly kills him, it seems that it would be only manslaughter, and that of the lowest degree; but if he only hears of it, and goes in search of the person, and meeting him, strikes him with a stick, and afterwards stabs him with a knife and kills him, in point of law it will be murder. *Reg. v. Fisher*, 8 C. & P. 182.

Where only a Colourable Excuse.]—If A. has formed a deliberate design to kill B., and after this they meet and have a quarrel, and many blows pass, and A. kills B., this will be murder, if the jury is of opinion that the death was in consequence of previous malice, and not of the sudden provocation. *Reg. v. Kirkham*, 8 C. & P. 115.

Even blows previously received will not extenuate homicide upon deliberate malice and revenge; especially where it is to be collected from the circumstances that the provocation was sought for the purpose of colouring the revenge. *Reg. v. Mason*, 1 East, P. C. 239.

Where Passion had Time to Cool.]—In a case of death by stabbing, if the jury is of opinion that the wound was inflicted by the prisoner while smarting under a provocation, so recent and so strong that he may be considered as not being at the moment the master of his own understanding, the offence will be manslaughter; but if there has been, after provocation, sufficient time for the blood to cool, for reason to resume its seat, before the mortal wound was given, the offence will amount to murder; and if the prisoner displays thought, contrivance and design in the mode of possessing himself of the weapon, and in again replacing it immediately after the blow was struck, such exercise of contrivance and design denotes rather the presence of judgment and reason than of violent and ungovernable passion. *Reg. v. Hayward*, 6 C. & P. 157. See also *Reg. v. Fisher*, *supra*.

Questions for Court and Jury.]—In a case of killing, whether the blood has had time to cool or not, is a question for the court, and not for the jury; but it is for the jury to find what length of time elapsed between the provocation received and the act done. *Reg. v. Fisher*, 8 C. & P. 182.

No Evidence by whom Blow Struck.]—When two or more, one of whom has received the provocation of a blow, are charged with murder, and one of them has received a provocation (as a blow) which would reduce homicide to manslaughter, and it cannot be proved which of them inflicted the fatal blow, neither of them can be convicted of murder, without a proof of a common design to inflict the homicidal act; nor of manslaughter, without proof of a common design to inflict unlawful violence. *Reg. v. Turner*, 4 F. & F. 339.

e. By Correction.

Excessive, by Person permitted to Correct Moderately.]—A schoolmaster who, on the second day of a boy's return to school, wrote to his parent, proposing to beat him severely, in order to subdue his alleged obstinacy, and on receiving the father's reply, assenting thereto, beat the boy for two hours and a half secretly in the night, and with a thick stick, until he died, is guilty of manslaughter. *Reg. v. Hopley*, 2 F. & F. 202.

If a father beats his son for theft so severely with a rope that he dies, it is only manslaughter. *Anon.*, 1 East, P. C. 261.

Where a person in loco parentis inflicts corporal punishment on a child, and compels it to work for an unreasonable number of hours,

and beyond its strength, and the child dies, the death being of consumption, but hastened by the ill-treatment, it will not be murder, but only manslaughter in the person inflicting the punishment, although it was cruel and excessive, and accompanied by violent and threatening language, if such person believed that the child was shamming illness, and was really able to do the quantity of work required. *Reg. v. Cheeseman*, 7 C. & P. 454.

In a case of manslaughter against the captain and the mate of a vessel for accelerating the death of a seaman, really in ill health, but who, they alleged, they believed to be a skulker, the question will be, in determining whether it is a slight or an aggravated case, whether the phenomena of the death were such as would excite the attention of reasonable and humane men; and in such a case, if the deceased is taken on board after he was discharged from a hospital, it is important to inquire whether he was sent on board by the surgeon of the hospital, as a person in a fit state of health to perform the duties of a seaman. *Reg. v. Leggett*, 8 C. & P. 191.

Where a butcher employed the deceased, a shepherd boy, to tend some sheep which were penned, and he negligently suffered some of them to escape through the hurdles; and the butcher, upon seeing it, ran towards the boy, and, taking up a stake, which was lying on the ground, threw it at him, and inflicted an injury of which he died:—Held, that under the circumstances it was a question for the jury whether it was murder or manslaughter; and they found the latter. *Reg. v. Wiggs*, 1 Leach, C. C. 379.

Infant incapable of appreciating Correction.]

—An infant, two years of age, is not capable of appreciating correction: a father, therefore, is not justified in correcting it, and if the infant dies owing to such correction the father is guilty of manslaughter. *Reg. v. Griffin*, 11 Cox, C. C. 402.

f. In Defence of Property.

In what Cases.]—If a ship's sentinel shoots a man because he persists in approaching the ship when he has been ordered not to do so, it will be murder unless such an act was necessary for the ship's safety. *Reg. v. Thomas*, 1 Russ. C. & M. 823.

A person set to watch a yard or a garden is not justified in shooting any one who comes into it in the night, even if he should see the party go into his master's hen-roost; but if, from the conduct of the party, he has fair grounds for believing his own life to be in actual and immediate danger, he is justified in shooting him. *Reg. v. Seully*, 1 C. & P. 319.

g. Killing without Intention whilst doing another Act.

i. Blow intended for Another.

If, on a sudden quarrel between two parties of keelmen and soldiers, a blow intended for an individual of one party would, if death ensued, have amounted only to manslaughter; it will be manslaughter though by accident it kills another. *Reg. v. Brown*, 1 Leach, C. C. 148; 1 East, P. C. 231, 245, 274.

Throwing Poker at Child.—Where a mother, being angry with one of her children, took up a small piece of iron used as a poker, and on his running to the door of the room, which was open, threw it after him, and hit another child who happened to be entering the room at the moment, in consequence of which he died:—Held, to be manslaughter, although it appeared the mother had no intention of hitting the child with whom she was angry, and only intended to frighten him. *Rea v. Conner*, 7 C. & P. 438.

ii. Negligence by Omission or Commission.

General Rule.—Generally, it may be laid down, that, where one by his negligence has contributed to the death of another, he is guilty of manslaughter. *Reg. v. Swindall*, 2 C. & K. 230; 2 Cox, C. C. 141.

That which constitutes murder when by design, and of malice prepense, constitutes manslaughter when arising from culpable negligence. *Reg. v. Hughes*, Dears. & B. C. C. 248; 7 Cox, C. C. 301; 26 L. J., M. C. 202; 3 Jur., N. S. 696.

Causing Cart to Upset.—A lad, as a frolic, without any intention to do any harm to any one, took the trap stick out of the front part of a cart, in consequence of which it was upset, and the carman who was in it, putting in a sack of potatoes, was pitched backwards on the stones and killed:—Held, that the lad was guilty of manslaughter. *Rea v. Sullivan*, 7 C. & P. 641.

Throwing Box into Sea.—The mere fact of a civil wrong committed by one person against another ought not to be used as an incident which is a necessary step in a criminal case, apart from the question of criminal negligence. Therefore the mere fact of a person wrongfully taking up a box from a refreshment stall on a sea pier, and wantonly throwing it into the sea, and thereby unintentionally causing the death of another bathing in the sea, is not per se, and apart from the question of negligence, sufficient to constitute the offence of manslaughter. *Reg. v. Franklin*, 15 Cox, C. C. 163.

Negligence in not Providing Necessaries, &c., for Helpless Persons.—Where from a conscientious religious conviction that God would heal the sick, and not from any intention to avoid the performance of their duty, the parents of a sick child refuse to call in medical assistance, though well able to do so, and the child consequently dies, it is not culpable homicide. *Reg. v. Wagstaffe*, 10 Cox, C. C. 530.

A parent who wilfully withholds necessary food from his child, with the wilful determination by such withholding to cause the death of the child, is guilty of murder if the child dies. *Reg. v. Conde*, 10 Cox, C. C. 547.

A parent who has the means to supply necessities, but who negligently, though not wilfully, withholds from a child food, which, if administered, would sustain its life, and the child consequently dies, is guilty of manslaughter. *Ib.*

An unmarried woman, eighteen years of age, who usually supported herself by her own labour, being about to be confined, returned to the house of her stepfather and her mother. She was taken in labour (the stepfather being absent at his work), and in consequence of the mother's neglect to use ordinary diligence in procuring

the assistance of a midwife the daughter died in her confinement. There was no proof that the mother had any means of paying for the services of a midwife:—Held, that no legal duty was cast upon the mother to procure a midwife, and therefore that she could not be convicted of the manslaughter of her daughter. *Reg. v. Shepherd*, 9 Cox, C. C. 123; L. & C. 147; 31 L. J., M. C. 102; 8 Jur., N. S. 418; 5 L. T. 687; 10 W. R. 297.

If a person does an act towards another who is helpless, which must necessarily lead to the death of that other, the crime amounts to murder; but if the circumstances are such that the person could not have been aware that the result would be death, that would reduce the crime to manslaughter, provided that the death was occasioned by an unlawful act, but not such an act as shewed a malicious mind. *Reg. v. Walters*, Car. & M. 164.

If a woman leaves her child, a young infant, at a gentleman's door, or other place where it is likely to be found and taken care of, and the child dies, it will be manslaughter only; but if the child is left in a remote place, where it is not likely to be found, e. g. on a barren heath, and the death of the child ensues, it will be murder. *Ib.*

If a master by premeditated negligence, or harsh usage, causes the death of his apprentice, it is murder. *Rea v. Self*, 1 Leach, C. C. 137; 1 East, P. C. 226.

Where a master culpably neglects to supply proper and sufficient food and lodging to a servant during a time when the servant is reduced to and in such an enfeebled state of body and mind as to be helpless, and unable to take care of himself, or is under the dominion and restraint of the master, and unable to withdraw himself from his control, and the servant's death is caused or accelerated by such neglect, the master is guilty of manslaughter. *Reg. v. Smith*, L. & C. 607; 10 Cox, C. C. 82; 34 L. J., M. C. 153; 11 Jur., N. S. 695; 12 L. T. 608; 13 W. R. 816.

On an indictment for the murder of an aged and infirm woman, by confining her against her will, and not providing her with meat, drink, clothing, firing, medicines and other necessities, and not allowing her the enjoyment of the open air, in breach of an alleged duty; if the jury thinks that the prisoner was guilty of wilful neglect, so gross and wilful that they are satisfied he must have contemplated her death, he will be guilty of murder; but if they only think that he was so careless that her death was occasioned by his negligence, though he did not contemplate it, he will be guilty of manslaughter. *Reg. v. Marriott*, 8 C. & P. 425.

And see ante, col. 427.

Boat Upsetting.—A., being on board a ship, and B. in a boat alongside, they had a dispute about the payment for some goods, both being intoxicated. A., to get rid of B., pushed away the boat with his foot; B. reaching out, to lay hold of a barge, to prevent his boat from drifting away, overbalanced himself, and fell into the water and was drowned. A. was charged with manslaughter:—Held, that these facts did not constitute that offence. *Rea v. Waters*, 6 C. & P. 328.

Non-repair of Roads.—Trustees appointed

under a local act for the purpose of repairing roads in a district, with power to contract for executing such repairs, are not chargeable with manslaughter if a person using one of such roads is accidentally killed in consequence of the roads being out of repair through neglect of the trustees to contract for repairing it. *Reg. v. Pooch*, 17 Q. B. 34; 5 Cox, C. C. 172.

Servant not Watching Tramway.]—The private servant of the owner of a tramway crossing a public road was entrusted to watch it; while he was absent from his duty an accident happened, and a person was killed. The private act did not require the owner to watch the tramway.—Held, that there was no duty between the owner and the public, and, therefore, his servant was not guilty of negligence, so as to make him guilty of manslaughter. *Reg. v. Smith*, 11 Cox, C. C. 210.

Exposure to Cold.]—A person was indicted for manslaughter. The evidence was that he struck the deceased twice with a heavy stick, that he afterwards left him asleep by the side of a small fire in a country lane during the whole of a frosty night in the month of January, and the next morning, finding him just alive, put him under some straw in a barn, where his body was found some months afterwards. The jury was directed that if death resulted from the beating or from the exposure during the night in question, such exposure being the result of criminal negligence, or from the prisoner leaving the boy under the straw ill, but not dead, the prisoner was guilty of manslaughter. *Reg. v. Martin*, 11 Cox, C. C. 136.

Through Neglect of Duty.]—To render a person liable to conviction for manslaughter through neglect of duty, there must be such a degree of culpability in his conduct as to amount to gross negligence. *Reg. v. Finney*, 12 Cox, C. C. 625.

An act of omission, as well as of commission, may be so criminal as to be the subject of an indictment for manslaughter. *Reg. v. Lowe*, 3 C. & K. 123; 4 Cox, C. C. 449.

In Conduct and Management of Steam Engines and Railway Trains.]—Where a man, appointed to superintend a steam-engine, employed in a colliery for the purpose of raising colliers from the pits, left the engine in the charge of an ignorant boy, who told him that he was unable to manage it, and in the absence of the engineer a man was drawn up, who was killed from the want of skill in the boy to manage the engine.—Held, that this was manslaughter in the engineer. *Ib.*

An explosion occurred on board a steamer, whereby one of three persons in charge of her was killed. The circumstance that the valves were out of order is not sufficient to make out, against either or both of them (one being the master and the other engineer), a case of such culpable negligence as would sustain a charge of manslaughter. *Reg. v. Gregory*, 2 F. & F. 153.

On an indictment against an engine-driver and a fireman of a railway train, for the manslaughter of persons killed while travelling in a preceding train, by the prisoners' train running into it, it appeared that on the day in question

special instructions had been issued to them, which in some respects differed from the general rules and regulations, and altered the signal for danger, so as to make it mean not "stop," but "proceed with caution;" that the trains were started by the superior officers of the company irregularly, at intervals of about five minutes; that the preceding train had stopped for three minutes, without any notice to the prisoners except the signal for caution; that their train was being driven at an excessive rate of speed; and that then they did not slacken immediately on perceiving the signal, but almost immediately, and that as soon as they saw the preceding train they did their best to stop, but without effect.—Held, first, that the special rules, so far as not consistent with the general rules, superseded them. *Reg. v. Trainer*, 4 F. & F. 105.

Held, secondly, that if the prisoners honestly believed they were observing them, and they were not obviously illegal, they were not criminally responsible. *Ib.*

Held, thirdly, that the fireman, being bound to obey the directions of the engine driver, and, so far as appeared, having done so, there was no case against him. *Ib.*

Upon a trial for manslaughter, it appeared that the prisoner was the driver and the deceased was the fireman of a steam-engine on a railway, and that the death of the latter was caused by the engine coming into collision with a train standing on the same line of rails, owing to a neglect on the part of the person in charge of the engine to keep a sufficient look out. There was evidence that it was the duty of the prisoner, or of the deceased, to keep the look out, but there was no evidence as to which of the two was charged with the duty at the time of the collision.—Held, that the prisoner was entitled to an acquittal. *Reg. v. Gray*, 4 F. & F. 1098.

When a collision occurs on a railway, and death is caused, the person responsible is the man actually in charge of the engine, and whose negligence caused the accident at the time of the collision. *Reg. v. Birchall*, 4 F. & F. 1087.

Maker of Imperfect Cannon.]—An iron-founder being employed by an oilman and a dealer in marine stores to make some cannon, to be used on a day of rejoicing, and afterwards to be put into a sailing boat; after one of them had burst, and been returned to him in consequence, sent it back in so imperfect a state, that on being fired it burst again, and killed a third person.—Held, that the maker was guilty of manslaughter. *Ree v. Carr*, 8 C. & P. 163, n.

Causing Mine to be Ventilated.]—If it is the duty of a person, as a ground bailiff of a mine, to cause the mine to be properly ventilated by causing air-headings to be put up where necessary, and by reason of his omission in this respect another is killed by an explosion of fire-damp, such person is guilty of manslaughter, if by such his omission he was guilty of a want of ordinary and reasonable precaution, and if it was his plain and ordinary duty to have caused an air-heading to have been made, and a man using reasonable diligence would have done it. *Reg. v. Haines*, 2 C. & K. 368.

Incautious Working in Shaft.—The deceased was with others employed in walling the inside of a shaft. It was the duty of the prisoner to place a stage over the mouth of the shaft, and the death of the deceased was occasioned by the negligent omission on his part to perform such duty. He was convicted of manslaughter:—Held, that the conviction was right. *Reg. v. Hughes*, Dears. & B. C. C. 248; 7 Cox, C. C. 301; 26 L. J., M. C. 202; 3 Jur., N. S. 696.

By Letting Loose Vicious Animals.—A man who having a horse, which he knows to be vicious and dangerous, turns it out upon a common, through which, to his knowledge, pass much frequented public footpaths, which are not fenced off, is guilty of culpable negligence, and if the horse kills any one passing over the common, he may be convicted of manslaughter; nor is it any defence that the deceased had strayed from the way, where he is still so near it that the jury cannot say whether he is on or off the path. *Reg. v. Dant*, L. & C. 567; 10 Cox, C. C. 102; 34 L. J., M. C. 119; 11 Jur., N. S. 549; 12 L. T. 396; 13 W. R. 663.

In Navigating Vessels.—Those who navigate the river Thames improperly, either by too much speed or by negligent conduct, are as much liable, if death ensues, as those who cause it on a public highway on land, either by furious driving or by negligent conduct. *Reg. v. Taylor*, 9 C. & P. 673.

To make the captain of a steam vessel guilty of manslaughter, in causing a person to be drowned by running down a boat, the prosecutor must shew some act done by the captain; and a mere omission on his part, in not doing the whole of his duty, is insufficient. *Reg. v. Green*, 7 C. & P. 156.

But if there is sufficient light, and the captain of a steamer is either at the helm or in a situation to be giving the command, and does that which causes the injury, he is guilty of manslaughter. *Id.*

The captain and pilot of a steam boat were both indicted for the manslaughter of a person who was on board a smack, by running the smack down. The running down was attributed, on the part of the prosecution, to improper steering of the steam boat, arising from there not being a man at the bow to keep a look-out at the time of the accident. It was proved that there was a man on the look-out when the vessel started, about an hour previously. According to one witness, the captain and pilot were both on the bridge between the paddle-boxes; according to another, the pilot was alone on the paddle box:—Held, that there was not such personal misconduct on the part of either as to make them guilty of felony. *Reg. v. Allen*, 7 C. & P. 153.

Persons on board a ship are necessarily subject to something like a despotic government, and it is extremely important that the law should regulate the conduct of those who exercise dominion over them. *Reg. v. Leggett*, 8 C. & P. 191.

In Driving Carriages or Horses.—If a person is driving a cart at an unusually rapid pace, and drives over another and kills him, he is guilty of manslaughter, though he called to the deceased to get out of the way, and he might have done

so, if he had not been in a state of intoxication. *Reg. v. Walker*, 1 C. & P. 320.

The fact that streets are usually crowded from any public procession, or other cause, instead of excusing a driver when proceeding at his ordinary pace, and with ordinary care, requires him to be particularly cautious, and may tend to render him criminally answerable for any accidents ensuing from driving at a rate, and with those precautions which he might have ordinarily observed. *Reg. v. Murray*, 5 Cox, C. C. 509.

A foot passenger walking by lamplight in the carriage road along a public highway, the owner of a cart, who was proved to be near-sighted, drove along at the rate of eight or nine miles an hour, sitting at the time on a few sacks laid on the bottom of the cart, and ran over the foot passenger and killed him:—Held, that he was guilty of such carelessness as amounted to the crime of manslaughter. *Reg. v. Groat*, 6 C. & P. 629.

If the driver of a carriage is racing with another carriage, and, from being unable to pull up his horses in time, the first-mentioned carriage is upset, and a person thrown off it and killed, this is manslaughter in the driver of the carriage. *Reg. v. Timmins*, 7 C. & P. 499.

If A. and B. are riding fast along a highway, as if racing, and A. rides by without doing any mischief, but B. rides against the horse of C., whereby C. is thrown and killed, this is not manslaughter in A. *Reg. v. Mastin*, 6 C. & P. 396.

If each of two persons is driving a cart at a dangerous and a furious rate, and they are inviting each other to drive at a dangerous and a furious rate along a turnpike road, and one of the carts runs over a man and kills him, each of the two persons is guilty of manslaughter. *Reg. v. Swindall*, 2 C. & K. 230; 2 Cox, C. C. 141.

A driver of a spring cart, standing in the cart and driving along a public road without reins, but not driving furiously, when a child runs across the road before the cart, and is killed by the wheel passing over it, is not guilty of manslaughter, unless he could have saved the life of the child if he had been driving with the reins in his hand. *Reg. v. Dalloway*, 2 Cox, C. C. 273.

If the driver of a conveyance uses all reasonable care and diligence, and an accident happens through some chance which he could not foresee or avoid, he is not to be held liable for the results of such accident. *Reg. v. Murray*, 5 Cox, C. C. 509.

If a man undertakes to drive another in a vehicle, he is bound to exercise proper care in regard to the safety of the man under his charge, and if by culpably negligent driving he causes the death of the other, he will be guilty of manslaughter. But he cannot be found guilty of manslaughter if the deceased himself interfered in the management of the horse, and thereby assisted in bringing about an accident. Even if the doctrine of contributory negligence applies to criminal cases, yet there is no contributory negligence on the part of anyone in merely getting into a vehicle and allowing himself to be driven, although the driver be perceptibly drunk. *Reg. v. Jones*, 11 Cox, C. C. 544; 22 L. T. 217.

By Deadly Weapons.—When a person fires at another a firearm knowing it to be loaded, and

therefore intending either to kill or to do grievous bodily harm, if death ensues the crime is murder; and if in such case the person who fires the weapon, though he does not know that it is loaded, has taken no care to ascertain, it is manslaughter. *Reg. v. Campbell*, 11 Cox, C. C. 323.

One who points a gun at another without previously examining whether it is loaded or not, if the weapon should accidentally go off and kill him towards whom it is pointed, is guilty of manslaughter. *Reg. v. Jones*, 12 Cox, C. C. 628.

If there is no legal excuse for using a gun, but nevertheless it is resorted to, and is fired even accidentally, it is manslaughter, and the jury having found that there was no necessity, but that the gun, being levelled at the deceased with no intention of discharging it, went off by accident.—Held, that the prisoner was guilty of manslaughter. *Reg. v. Weston*, 14 Cox, C. C. 346.

Where A., having a right to the possession of a gun which was in the hands of the deceased, and which he knew to be loaded, attempted to take it away by force, and in the struggle which ensued the gun went off accidentally and caused the death of the deceased:—Held, that as the death was caused by the discharge of the gun, which was the result of the unlawful act of A., he was guilty of manslaughter. *Reg. v. Archer*, 1 F. & F. 361.

Where a gamekeeper tried to arrest a man whom he found poaching, and a gun which the poacher had went off and shot the keeper:—Held, that even although the gun went off accidentally in the course of a scuffle with the keeper, he having a right to take the gun, it was manslaughter in the man who caused it. *Reg. v. Sheet*, 4 F. & F. 931.

A., B. and C. went into a field in proximity to certain roads and houses, taking with them a rifle which would be deadly at a mile, for the purpose of practising firing with it. B. placed a board, which was handed to him by A., in the presence of C., in a tree in the field as a target. All three fired shots directed at the board so placed, from a distance of about 100 yards. No precautions of any kind were taken to prevent danger from such firing. One of the shots thus fired by one, though it was not proved by which one, of them, killed a boy in a tree in a garden near the field, at a spot distant 393 yards from the firing point. A., B. and C. were all found guilty by a jury of manslaughter:—Held, that A., B. and C. had been guilty of a breach of duty in firing at the spot in question, without taking proper precautions to prevent injury to others, and were rightly convicted of manslaughter. *Reg. v. Salmon*, 6 Q. B. D. 79; 50 L. J., M. C. 25; 43 L. T. 573; 29 W. R. 246; 45 J. P. 270; 14 Cox, C. C. 494.

Giving Spirituous Liquors or Poison.—A party causing the death of a child, by giving it spirituous liquors in a quantity quite unfit for its tender age, is guilty of manslaughter. *Rex v. Martin*, 3 C. & P. 211.

The prisoner was convicted of manslaughter. It appeared that he procured sulphate of potash, and gave it to his wife, intending her to take it for the purpose of procuring abortion, and that she, believing herself to be pregnant, although in reality she was not, took the sulphate of potash

in his absence, and died from its effects:—Held, that the conviction was right. *Reg. v. Gaylor*, Dears. & B. C. C. 288; 7 Cox, C. C. 253.

Negligence of Others as well as of Prisoner.—Although it is manslaughter where the death was the result of the joint negligence of the prisoner and others; yet it must have been the direct result, wholly or in part, of the prisoner's negligence, and his neglect must have been wholly or in part the proximate and efficient cause of the death, and it is not so where the negligence of some other person has intervened between his act or omission and the fatal result. *Reg. v. Ledger*, 2 F. & F. 857.

It is no defence in a case of manslaughter that the death of the deceased was caused by the negligence of others as well as by that of the prisoner; for if the death of the deceased is caused partly by the negligence of the prisoner and partly by the negligence of others, the prisoner and all those others are guilty of manslaughter. *Reg. v. Haines*, 2 C. & K. 368.

Contributory Negligence of Deceased no Defence.—Wherever death ensues from injuries inflicted by parties engaged in any illegal act, an indictment for manslaughter will lie, even though it appears that the deceased had materially contributed to his death by his own negligence. *Reg. v. Longbottom*, 3 Cox, C. C. 439.

If a person is driving a cart at a very rapid pace and kills a man, he is guilty of manslaughter though he called to deceased to get out of the way, and the deceased might have done so, if he had not been in a state of intoxication. *Rex v. Walker*, 1 C. & P. 320.

It is no ground of defence that the death was partly caused by the negligence of the deceased himself or that he was either deaf or dumb at the time. *Reg. v. Swindall*, 2 Cox, C. C. 141; 2 C. & K. 230.

Contributory negligence is not an answer to a criminal charge as it is to a civil action. *Reg. v. Kew*, 12 Cox, C. C. 355.

If a person undertakes to drive another and drives so unskillfully and negligently as to cause death, he cannot be found guilty of manslaughter if the deceased himself interfered in the management of the horse, and thereby assisted in bringing about an accident. *Reg. v. Jones*, 11 Cox, C. C. 544; 22 L. T. 217.

In one case it was held that a man was not criminally responsible for the death of another party caused by his negligence, where he would not have been civilly liable in an action at the suit of the party injured, if the injuries sustained had fallen short of causing his death. *Reg. v. Birchall*, 4 F. & F. 1087.

h. Killing Officers of Justice.

Illegal Arrest.—Attempting illegally to arrest a man is sufficient to reduce killing the person making the attempt to manslaughter, though the arrest was not actually made, and though the prisoner had armed himself with a deadly weapon to resist such attempt, if the prisoner was in such a situation that he could not have escaped from the arrest; and it is not necessary that he should have given warning to the person attempting to arrest him before he struck the blow. *Rex v. Thompson*, 1 M. C. C. 80.

— **Person aiding Constable in.**—If a constable takes a man without warrant upon a charge which gives him no authority to do so, and the prisoner runs away and is pursued by J. S., who was with the constable all the time, and charged by him to assist, and the man kills J. S. to prevent his retaking him, it will not be murder, but manslaughter only; because, if the original arrest was illegal, the recaption would have been so likewise. *Rea v. Curran*, 1 M. C. C. 132. See *Reg. v. Porter* and *Reg. v. Phelps*, *infra*.

By Prisoner Escaping.—If a man, having been lawfully apprehended by a police constable on a criminal charge, uses violence to the constable or to anyone lawfully aiding or assisting him, which causes death, and does so with intent to inflict grievous bodily injury, he is guilty of murder. *Reg. v. Porter*, 12 Cox, C. C. 444.

And so, if he does so only with intent to escape. But if, in the course of the struggle, he accidentally causes an injury, it would be manslaughter. *Ib.*

Warrant—Christian Name Omitted.—A warrant leaving a blank for the christian name of the person to be apprehended, and giving no reason for omitting it, but describing him only as the son of J. S. L. (it appeared that J. S. L. had four sons, all living in his house), and stating the charge to be for assaulting A., without particularizing the time, place, or any other circumstances of the assault, is too general and unspecific. A resistance to an arrest thereon, and killing the person attempting to execute it, will not be murder. *Rea v. Hood*, 1 M. C. C. 281; *S. P.*, *Hoye v. Bush*, 2 Scott, N. R. 86; 1 M. & G. 775; 1 Drink. 15.

— **Given to Constable's Son.**—A constable, having a warrant to apprehend A., gave it to his son, who, in attempting to arrest A., was stabbed by him with a knife which A. happened to have in his hand at the time, the constable then being in sight, but a quarter of a mile off:—Held, that his arrest was illegal; and that, if death had ensued, this would have been manslaughter only, unless it was shewn that A. had prepared the knife beforehand to resist the illegal violence. *Rea v. Patience*, 7 C. & P. 795.

— **Informality of, Unknown to Prisoner.**—K. and D. were arrested in England upon Irish warrants which were not backed in England, and which did not specify with what particular felony they were charged. They were brought before a magistrate and remanded. When being conveyed in a police-van through the streets of Manchester in the daytime, the now prisoners, armed with revolvers, attacked the van, the police-sergeant in charge of it was shot by one of the prisoners, and K. and D. escaped. Upon the trial of the prisoners for wilful murder, it was contended that the arrest of K. and D. being illegal by reason of the informality of the warrants, the offence committed amounted only to manslaughter:—Held, that in view of the facts that K. and D. had been for some time in custody, that the informality of the warrants was unknown to the prisoners, and that they deliberately, and with premeditation, devised and carried out the attack which resulted in the death of the police-

sergeant, the offence was murder and not manslaughter. *Reg. v. Allen*, 17 L. T. 222.

A police-officer is protected if he acts upon a warrant, even though that warrant is informal, and if he is killed when so acting by a premeditated attack, with a view to a rescue, the crime will be murder, the proper course being to apply to a court of law for a habeas corpus to have the prisoner discharged from custody. *Ib.*

In Case of Felony.—Killing an officer will amount to murder, though he had no warrant, and was not present when any felony was committed, but takes the party upon a charge only; and though such charge does not in terms specify all the particulars necessary to constitute the felony. *Rea v. Ford*, R. & R. C. C. 329.

Killing an officer who attempts to arrest a man on a charge of felony will be murder, though the officer had no warrant, and though the man has done nothing for which he was liable to be arrested, if the man knows the individual to be an officer, though the officer does not notify to him that he has such a charge. *Rea v. Woolmer*, 1 M. C. C. 334.

When Person found Committing Offence.—If the servant of the owner of property found a party actually committing an offence against 7 & 8 Geo. 4, c. 29, and apprehended him under s. 63, and, while taking the party to a magistrate, such party killed him, this will be murder; but if the servant either did not see him in the actual commission of the offence, or is taking him to any other place than before a magistrate, it will not be murder. *Rea v. Curran*, 3 C. & P. 397.

Stolen Potatoes in Possession.—A police officer found N. with potatoes under his shirt, which had been recently dug from the ground, and apprehended him. The policeman called O. to assist him; O. did so, and a rescue being attempted, O. was struck by A., who went away, and O. was afterwards killed by other persons, who attempted the rescue:—Held, that the police officer had no right to apprehend N., and that the killing of O., therefore, did not amount to murder. *Reg. v. Phelps*, Car. & M. 180; 2 M. C. C. 240.

Apprehension of Poachers by Gamekeepers.]

—Under 9 Geo. 4, c. 69, s. 2, a gamekeeper may apprehend poachers, though there are three or more, and found armed; for though s. 2 only authorizes apprehending for what are offences under s. 1, and when there are three or more armed, they are punishable under s. 9; yet what is punishable under s. 9 is nevertheless an offence under s. 1, though the circumstances of aggravation make it liable to a greater punishment; and if the gamekeeper is killed in the attempt to apprehend, the offender will be guilty of murder, though the gamekeeper had previously struck the offender, or any of his party, if he struck in self-defence only, and to diminish the violence illegally used against him, and not vindictively to punish. *Rea v. Ball*, 1 M. C. C. 330.

If a gamekeeper, attempting lawfully to apprehend a poacher, is met with violence, and in opposition to such violence, and in self-defence, strikes the poacher, and then is killed by the poacher, it will be murder. *Rea v. Ball*, 1 M. C. C. 333.

A servant of C. attempted to apprehend A.,

who was out night-poaching in a wood, and the servant was killed by A. C. was neither the owner nor the occupier of the wood, nor the lord of the manor, C. having only the permission of the owner of the wood to preserve game there:—Held, that this was manslaughter only in A. *Ree v. Addis*, 6 C. & P. 388.

If a servant of A. (who is not lord of the manor) finds a night poacher on the lands of B., and pursues him with intent to take him, this is such an attempt at an illegal arrest, that if the poacher shoots the servant with the gun which he has in his hand, and kills him, this will be manslaughter only. *Ree v. Davis*, 7 C. & P. 783.

Prosecution must shew Lawful Authority.]—Where a common soldier stabbed a sergeant in the same regiment who had arrested him for some alleged misdemeanor:—Held, that as the articles of war were not produced, by which the arrest might have been justified, it was only manslaughter, as no authority appeared for the arrest. *Ree v. Whithers*, 1 East, P. C. 295, 360.

Knowledge or Notification that Person is an Officer.]—In order to make the killing of an officer of justice, whether he is authorized in right of his office, or by warrant, amount to murder upon his interference in an affray, it is necessary that he should have given some notification of his being an officer, and of the intent with which he interfered. *Ree v. Gordon*, 1 East, P. C. 315, 352.

If a man knows that the person arresting him is an officer, the latter need not notify the fact to the former. *Ree v. Woolmer*, 1 M. C. C. 334.

Manner in which Authority Exercised.]—If a person is playing music in a public thoroughfare, and thereby collects together a crowd of people, a policeman is justified in desiring him to go on, and in laying his hand on him and slightly pushing him, if it is only done to give effect to his remonstrance; and if the person, on so small a provocation, strikes the policeman with a dangerous weapon and kills him, it will be murder; but otherwise, if the policeman gives him a blow and knocks him down. *Ree v. Hagan*, 8 C. & P. 167.

If a police constable, on being sent for at a late hour of the night to clear a beer-house, does so, and one of the persons, on leaving the house, and being told to go away, refuses to do so, and uses threatening language, the constable is justified in laying hands on him to remove him; and if he cuts the constable with a knife, with intent to do grievous bodily harm, this is a capital offence, and the fact of the constable having laid hands on the party, would not have reduced the crime to manslaughter, if death had ensued. *Ree v. Hems*, 7 C. & P. 312.

i. Killing by Officers of Justice.

No Means of Apprehension.]—It is no excuse for killing a man who was out at night dressed in white as a ghost, for the purpose of frightening the neighbourhood, that he could not otherwise be taken. *Ree v. Smith*, 1 Russ. C. & M. 749.

Without Authority.]—Two soldiers not belonging to a recruiting party, who were in a public-house, wished to enlist M. and gave him a

shilling for that purpose, and M. afterwards wishing to go away, an altercation ensued, and one of the soldiers stood at the door with his drawn sword and swore he would stab any person who attempted to come out. The landlord of the house was stabbed in the scuffle. It was argued that the soldiers had authority to enlist M., and that what was done was merely to prevent his rescue; but it was held that they had no authority and therefore that it was murder. *Ree v. Longden*, R. & R. C. C. 228.

To prevent Impressment.]—If a person is impressed who is not a proper object of impressment, or if the impressment is made without any legal warrant, it is lawful for the party to make resistance; and if the death of the party impressed ensues it is murder. *Ree v. Dixon*, 1 East, P. C. 313; R. & R. C. C. 53; S. P., *Ree v. Rokeby*, 1 East, P. C. 312.

j. Killing in Self-Defence.

In what Cases a Defence.]—The use of such a weapon as a gun even against an unarmed man, may be excused or justified, not only by necessity for defence against death or serious injury, but the reasonable apprehension of it. *Reg. v. Weston*, 14 Cox, C. C. 346.

The killing a man on the highway is not justifiable homicide, unless there was an intention on the part of the person killed to rob or murder, or do some dreadful bodily injury to the person killing; or, in other words, the conduct of the party must be such as to render it necessary on the part of the party killing to do the act in self-defence. *Reg. v. Bull*, 9 C. & P. 22.

A person set to watch a yard or a garden is not justified in shooting any one who comes into it in the night, even if he should see the party go into his master's hen-roost; but if, from the conduct of the party, he has fair grounds for believing his own life to be in actual and immediate danger, he is justified in shooting him. *Ree v. Scully*, 1 C. & P. 319.

The right of self-defence does not justify counter-blows struck with a desire to fight. *Reg. v. Knock*, 14 Cox, C. C. 1.

5. INDICTMENT.

What is—Coroner's Inquisition.]—A coroner's inquisition is an indictment, within 24 & 25 Vict. c. 100, s. 6 (*infra*), and it is, therefore, unnecessary to set forth therein the manner in which, or the means by which, the death of the deceased was caused. *Reg. v. Ingham*, 5 B. & S. 257; 9 Cox, C. C. 508; 33 L. J., Q. B. 183; 10 Jur., N. S. 968; 10 L. T. 456; 12 W. R. 793.

Manner and Means of Death.]—By 24 & 25 Vict. c. 100, s. 6, in any indictment for murder or manslaughter, or for being an accessory to any murder or manslaughter, it shall not be necessary to set forth the manner in which or the means by which the death of the deceased was caused, but it shall be sufficient in any indictment for murder to charge that the defendant did feloniously, wilfully and of his malice aforethought kill and murder the deceased; and it shall be sufficient in any indictment for manslaughter to charge that the defendant did feloniously kill and slay the deceased;

And it shall be sufficient in any indictment

against any accessory to any murder or manslaughter to charge the principal with the murder or manslaughter (as the case may be) in the manner hereinbefore specified, and then to charge the defendant as an accessory in the manner heretofore used and accustomed. (Similar to former provision, 14 & 15 Vict. c. 100, s. 4.)

— **Before these Enactments.**—An indictment for murder must have set forth particularly the manner of the death, and the means by which it was effected. *Reg. v. Sharwin*, 1 East, P. C. 341, 421.

An indictment for murder, which stated wounds as contributing to the death, need not have stated their length, depth, or breadth. *Reg. v. Mosley*, 1 M. C. C. 97; 1 Lewin, C. C. 189; *S. P.*, *Reg. v. Tomlinson*, 6 C. & P. 370.

An indictment for murder must state that the prisoner gave the deceased a mortal wound. *Reg. v. Lad*, 1 Leach, C. C. 96.

Where death proceeded from suffocation, by the swelling up of the passage of the throat, and such swelling proceeded from wounds occasioned by forcing things into the throat, the statement might be, that the things were forced into the throat, and the deceased thereby suffocated; and it was not necessary to mention the immediate cause of suffocation, namely, the swelling of the throat. *Reg. v. Tye*, R. & R. C. C. 345.

A. was charged with suffocating B. by placing both her hands about the neck of B.:—Held, that she might be convicted, if B. was suffocated in any manner, either by A. or by any other person in her presence, she being privy to the commission of the offence. *Reg. v. Culkin*, 5 C. & P. 121.

If the death of a deceased was charged to be by suffocation, by placing the hand on the mouth of the deceased, this allegation was made out, if the jury was satisfied that any violent means were used to stop the respiration of the deceased. *Reg. v. Waters*, 7 C. & P. 250.

In an indictment for murder, an allegation that it was committed "with a certain sharp instrument, to the jurors aforesaid unknown," was sufficiently certain. *Reg. v. Grounsell*, 7 C. & P. 788.

An indictment, which stated the death to be by striking and beating the deceased with a piece of brick, was not supported by proof that the prisoner knocked him down with his fist, and that the death was caused by the deceased striking his head by falling on a piece of brick, in consequence of the blow. *Reg. v. Kelly*, Car. C. L. 75; 1 M. C. C. 113; 1 Lewin, C. C. 193; *Reg. v. Wrigley*, 1 Lewin, C. C. 127.

Or by proof that he knocked him down by a blow upon the head, and that he was killed by a mortal wound received by falling on the ground. *Reg. v. Thompson*, Car. C. L. 75; 1 M. C. C. 139; 1 Lewin, C. C. 194.

An indictment charging that the prisoner a musket loaded with gunpowder and a leaden bullet to, against, and upon M. G., feloniously, &c., "did shoot, discharge, and send forth; and that he, with the leaden bullet aforesaid, out of the musket aforesaid, then and there by the force of the gunpowder so shot, discharged, and sent forth as aforesaid," M. G. did strike, &c., was good, and the words "sent forth," and the other added words which did not occur in the usual form, might be rejected as surplusage. *Reg. v. Stokes*, 2 C. & K. 536; 17 L. J., M. C. 116.

In an indictment for murder by poisoning, it is sufficient, after alleging the administering the deadly poison, and the mortal sickness occasioned thereby, to aver, "of which said mortal sickness and distemper the said E. S. died." *Reg. v. Sandys*, 2 M. C. C. 227; Car. & M. 345.

An indictment for manslaughter, that J. E. caused R. D. to become mortally sick, of which mortal sickness, especially of a mortal congestion of the lungs and heart, occasioned by the means aforesaid, he died, properly charged a death from a mortal congestion caused by those means. *Reg. v. Ellis*, 2 C. & K. 470.

In a count for murder, the death was stated to be by a blow of a stick, and, in another count, by the throwing of a stone. The jury found the prisoners guilty of manslaughter, generally, on both counts, and the judges held the conviction right. *Reg. v. O'Brian*, 2 C. & K. 115; 1 Den. C. C. 9.

An indictment charged A. with giving a mortal wound to G. on the 27th of May, of which wound he died on the 29th of May; and that Y. and Z., on the day and year first aforesaid, were present, aiding and abetting A. the felony aforesaid to do and commit. The jury found all the prisoners guilty of manslaughter; and it was objected for Y. and Z., that the felony of A. was not complete till the death of G.; but the judges held the conviction right. *Id.*

A. and B. were indicted for the murder of C., by shooting him with a gun. In the first count A. was charged as principal in the first degree, B. as present, aiding and abetting him. In the second count, B. as principal in the first degree, A. as aiding and abetting. The jury convicted both, but said that they were not satisfied as to which fired the gun:—Held, first, that the jury was not bound to find the prisoners guilty of one or other of the counts only. *Reg. v. Dowling*, 1 Den. C. C. 52; 2 C. & K. 382.

Held, secondly, that, notwithstanding the word "afterwards" in the second count, both the counts related substantially to the same person killed and to one killing, and might have been transposed without any alteration of time or meaning. *Id.*

A. was indicted for the manslaughter of B. by a blow of a hammer. No proof was given of the striking of any blow, only of a scuffle between the parties. The appearance of the injury was consistent with the supposition, either of a blow with a hammer, or of a push against the lock or the key of a door:—Held, that if it was occasioned by a blow with a hammer, or any other hard substance held in the hand, it was sufficient to support an indictment; but otherwise, if it was the result of a push against the door. *Reg. v. Martin*, 5 C. & P. 128.

In an indictment for manslaughter, it was not necessary to allege the causes merely natural which conduced to the death of the party; it was sufficient to allege truly the act with which the prisoner was charged, if that act accelerated the death. *Reg. v. Webb*, 1 M. & Rob. 405; 2 Lewin, C. C. 196.

Name of Deceased—When unknown.—If the name of the party killed is not known, it may be alleged to be a certain person to the jurors unknown. *Reg. v. Clark*, R. & R. C. C. 358.

C. was indicted for manslaughter, in killing "a woman, whose name to the jurors is unknown," C. cohabited with the woman, and sometimes said

that she was his wife, and sometimes that she was not; and none of the witnesses had heard her called by any name:—Held, that, if the jury was satisfied that the deceased was not the wife of the prisoner, and that the name of the deceased could not be ascertained by any reasonable diligence, the description of the deceased was proper; but that, if the jury should think that the deceased was the wife of the prisoner, the description was bad; for, although there was no evidence of her christian name, she was entitled to the surname of C., as being that of her husband. *Reg. v. Campbell*, 1 C. & K. 82.

— **Accounting for Omission.**—An indictment for child murder is bad for not stating the name of the child or accounting for the omission. *Reg. v. Hicks*, 2 M. & Rob. 302.

— **Illegitimate Child.**—A bastard must not be described by his mother's name, till he has gained that name by reputation. *Reg. v. Clark*, R. & R. C. C. 358.

Where a deceased illegitimate child had not been baptized, but the mother had, on two occasions, called it Mary Anne, a witness stating that the putative father had said he was a Baptist:—Held, that it was rightly described as a female child whose name was unknown. *Reg. v. Smith*, 6 C. & P. 151; 1 M. C. C. 402; *S. P.*, *Reg. v. Poulton*, 5 C. & P. 329.

In an indictment for the murder of a bastard child, the absence of a name is sufficiently accounted for by the child being described as "lately before born of the body of J. H." *Reg. v. Hogg*, 2 M. & Rob. 380.

Indictment stated, that the prisoner, a single woman, on the 27th August, 1844, brought forth a male child alive; that she afterwards, to wit, on the day and year aforesaid, killed this child. Objection, that the indictment ought to have stated the name of the child, or that its name was unknown to the jurors, overruled at the trial, on the ground that there was no presumption, from the mere fact of birth, that the child had a name, it being a bastard; that the indictment afforded no presumption of its having acquired a name by reputation or baptism; that an averment that the name was unknown implied the acquisition of some name:—Conviction held right. *Reg. v. Willis*, 1 Den. C. C. 80; 1 C. & K. 722.

An indictment for murder of a bastard child described as Harriet Stroud is not sustained by proof of a child christened Harriet, and only called by that name, though the mother's name was Stroud. The proper description is Harriet. A child "whose name is to the jurors unknown" is not good, because the name of Harriet was known. *Reg. v. Stroud*, 2 M. C. C. 270; 1 C. & K. 187.

— **Proof.**—An illegitimate child, six weeks old, baptized on a Sunday, and from that day to the following Tuesday called by its name of baptism and its mother's surname, is sufficient evidence to warrant the jury in finding that the deceased was properly described by those names. *Reg. v. Evans*, 8 C. & P. 765.

An indictment charged the murder of Eliza Waters. The deceased was the illegitimate child of the prisoner, whose name was Ellen Waters; and a witness said, on the trial, "The child was called Eliza; I took it to be baptized, and said it

was Eleanor Waters's child:—"Held, that it was not sufficient proof that the surname of the deceased was Waters. *Reg. v. Waters*, 1 M. C. C. 457.

— **Unbaptized Child.**—Not named is a good description of an unbaptized infant child in an indictment for its murder. *Reg. v. Waters*, 2 C. & K. 864; 1 Den. C. C. 356; 1. & M. 57; 18 L. J., M. C. 50; 13 Jur. 130.

But not baptized would be insufficient. *Ib.* *S. P.*, *Reg. v. Bliss*, 8 C. & P. 773.

Averment of Malice.—The indictment must state, that the act by which death ensued was done of malice aforethought. *Reg. v. Nicholson*, 1 East, P. C. 346.

Negligence—Averment of Omission.—[In an indictment for manslaughter it is not necessary that it should specifically charge that it was by an act of omission. *Reg. v. Smith*, 11 Cox, C. C. 210.

Negligence of Railway Signalmen.—[In an indictment for manslaughter by neglect to give a proper signal to denote the obstruction of a line of railway, whereby a collision took place and a passenger was killed: it was charged that the prisoner's duty was to attend to the proper working of the signals according to the rules:—Held, that it was not necessary to set out the rules. *Reg. v. Pargeter*, 3 Cox, C. C. 191.

An averment that it was the prisoner's duty to signal an obstruction, and that there was an obstruction which the prisoner neglected to signal, was a sufficient description of the offence. *Ib.*

A count charging both a neglect to give the right signal and the giving of a wrong signal, is not bad for duplicity. *Ib.*

It is sufficient to charge that the prisoner neglected and omitted to alter the signal without stating more particularly which was the specific alteration which he so neglected to make. *Ib.*

Negligence by Medical Practitioner.—[An indictment against a medical practitioner charged that he made divers assaults on the deceased, a patient, and applied wet clothes to his body and caused him to be put in baths:—Held, that this was a proper mode of laying the offence, although all that was done was by the consent of the deceased; and that the indictment need not charge an undertaking to perform a cure, and a felonious breach of duty. *Reg. v. Ellis*, 2 C. & K. 470.

Allegation of Duty.—[Where an engineer who had charge of an engine which was worked for the purpose of keeping up a supply of pure air in a mine neglected his duty, so that the engine stopped, and the mine thereby became charged with foul air, which afterwards exploded and caused the death of one of the miners:—Held, that the engineer could not be convicted of manslaughter on an indictment which did not allege a duty in him which he had neglected to perform. *Reg. v. Barrett*, 2 C. & K. 343.

Offence committed on High Seas or Abroad.—[On a charge of murder on the high seas, on board a British ship, afloat; the deceased having been thrown out of a foreign ship in a foreign

port, the question whether all these facts must not be averred in each count of the indictment, in order to give a judge sitting under an ordinary commission of oyer and terminer and general gaol delivery jurisdiction to try the offence, as it arises on the record, is a point which will not be reserved for the Court of Criminal Appeal. *Reg. v. Menham*, 1 F. & F. 369.

An indictment on 33 Hen. 8, c. 23, for the murder of one British subject by another in a foreign state, stating that the person murdered was at the time in the king's peace, was sufficient to shew that he was a British subject. *Reg. v. Sawyer*, R. & R. C. C. 294; 2 C. & K. 101.

Amendment.—A woman, charged with the murder of her husband, was described as A., the wife of J. O., late of the parish of S., in the county of W., labourer. The judge ordered this to be amended, by striking out the word wife, and inserting the word widow. *Reg. v. Orchard*, 8 C. & P. 565.

6. EVIDENCE.

a. Generally.

Onus of Proof of Mitigation.—Where it appears that one person's death is occasioned by the hand of another, it is for that other to shew, either by evidence or by inference from the circumstance of the case, that his offence is of a mitigated character, and does not amount to the crime of murder. *Reg. v. Greenacre*, 8 C. & P. 35.

A man was indicted for the manslaughter of a woman by driving a cab over her in a public street, and his defence was that he had used due and proper care in driving the cab upon the occasion in question:—Held, that the burthen of proving negligence did not lie on the crown, but that, upon the fact of the killing being proved, it was cast upon the prisoner to shew that he had used due and proper care in driving the cab. *Reg. v. Cavendish*, 8 Ir. R., C. L. 178.

Proof that Deceased was an Apprentice.—An indictment for manslaughter stated in a first count, that the deceased was the apprentice of the prisoner, and that it was the duty of the prisoner to provide the deceased with proper nourishment and medicine, and charged the death to be from neglect. A second count charged that the deceased, "so being such apprentice as aforesaid," was killed by the prisoner by over-work and beating. No evidence was given of any indenture, but a witness proved that the prisoner told him that the deceased was his apprentice:—Held, that this was sufficient proof of the allegation of the apprenticeship in the second count, but not of that in the first count. *Reg. v. Crumpton*, Car. & M. 597.

Seemle, that where the charge is, that the prisoner received a child as an apprentice, an indictment, importing that a former master, with the child's consent, bound the child to the prisoner, will be sufficient evidence of the receiving as an apprentice, though such indenture is executed by a stranger as trustee for the former master, and not in the former master's name. *Reg. v. Friend*, R. & R. C. C. 20.

Proof that Deceased was a Constable.—On an indictment for the murder of a constable in the execution of his office, it is not necessary to pro-

duce his appointment: it is sufficient if it is proved that he was known to act as a constable. *Reg. v. Gordon*, 1 Leach, C. C. 515; 1 East, P. C. 312.

Everyones Present should be called by Prosecution.—On a trial for murder, every person who was present at the time of the transaction which gives rise to the charge, ought to be called as a witness on the part of the prosecution; for, even if they give different accounts, the jury should hear the evidence, and draw their own conclusion as to the truth. *Reg. v. Holden*, 8 C. & P. 606.

Proof of Death of Deceased.—On the trial of an indictment for murder, the death of the person charged to have been killed may be collected from the circumstances, if incapable of being proved by other evidence. *Reg. v. Hindmarsh*, 2 Leach, C. C. 569.

As where the deceased was thrown overboard into the sea, and never heard of afterwards. *Id.*

Although it is necessary, in a case of murder, that there should be evidence that the body found is the body of the murdered person, the circumstances may be sufficient evidence of identity. *Reg. v. Checcerton*, 2 F. & F. 833.

A girl was indicted for the murder of her child, aged sixteen days. She was proceeding from Bristol to Llandogo, and was seen near Tintern, with the child in her arms, at 6 P.M.; she arrived at Llandogo between 8 and 9 P.M., without the child. The body of a child was afterwards found in the river Wye, near Tintern, which appeared not to be the child of the prisoner:—Held, that she must be acquitted, and that she could not by law either be called upon to account for her child, or to say where it was, unless there was evidence to shew that her child was actually dead. *Reg. v. Hopkins*, 8 C. & P. 591.

Circumstantial Evidence.—Where a charge of murder depends upon circumstantial evidence, it ought not only to be consistent with the prisoner's guilt, but inconsistent with any other rational conclusion. *Hodge's case*, 2 Lewin, C. C. 227.

On a charge of murder, the deceased having been found tied hand and foot, and with something forced into the throat, apparently to prevent any outcry, but which had caused suffocation, and the state of the premises shewing that a burglary had been committed; and the evidence against the prisoner being a chain of circumstances tending to identify him as one of two persons employed in the burglary, the jury was directed, that, if satisfied that the prisoner was engaged in the burglary, and a party to the violence on the person of the deceased, they should find him guilty of the murder. *Reg. v. Franz*, 2 F. & F. 580.

Exhaustive Process of Proof.—On an indictment for manslaughter by causing a fire, it is necessary, in order to sustain the case by an exhaustive process of proof, to shew that the fire could not have arisen from any other cause than that charged; it is necessary to leave no considerable interval of time in which some other cause might have acted. *Reg. v. Gardner*, 1 F. & F. 669.

Intent to Kill another Person.—Although, where it is clearly proved that the prisoner wil-

fully gave the fatal blow, it is not necessary to shew motive or personal malice, or a particular intent to kill the deceased; and if he killed A., meaning to kill B., it is clearly murder; yet, where it is a main part of the proof that he killed the deceased, that he meant to kill some one else, it is essential to prove that he had an intent to kill such other person, and that such person was or might be supposed to be at or near the spot, at or about the time of the fatal blow. *Reg. v. Cleary*, 2 F. & F. 850.

Sufficiency of Proof.]—An allegation in an indictment, charging that the death of a person was caused by a plaister made and applied by the prisoner, is sufficiently proved by shewing that three plaisters were applied, and that two of them were applied by the prisoner, and the third made from materials furnished by the prisoner. *Reg. v. Spiller*, 5 C. & P. 333.

An indictment charged that the death of the deceased was caused by a mortal wound of the head, inflicted with a swingle. It was proved that the death was caused by a blow on the head by a piece of wood, and that the external skin was not broken, but that there was extravasation of blood, pressing on the brain, and a collection of blood between the scalp and the brain. The surgeon stated this to be a contused wound, with effusion of blood:—Held, that the evidence supported the indictment. *Reg. v. Warman*, 2 C. & K. 195; 1 Den. C. C. 163.

An indictment charged, that the deceased was on horseback, and that the prisoner struck him with a stick, and that the deceased, from a well-grounded apprehension of a further attack, which would have endangered his life, spurred his horse, which became frightened, and threw him, giving him a mortal fracture. The evidence was, that the prisoner struck the deceased with a small stick, and that the latter rode away, and the former rode after him; whereupon the deceased spurred his horse, which then winced and threw him, whereby he was killed:—Held, that this evidence sufficiently supported the indictment. *Reg. v. Hickman*, 5 C. & P. 151.

— **Neglect of Parent to provide Medical Aid for Child.]**—M. was convicted of the manslaughter of his son, a child of tender years. The child died of confluent small-pox, and the prisoner, though able to do so, did not, owing to certain religious views he held, employ any medical practitioner, nor afford to the child during its illness any medical aid or attendance. It was proved that proper medical aid and attendance might have saved or prolonged the child's life, and would have increased its chance of recovery, but that it might have been of no avail; and there was no positive evidence that the death was caused or accelerated by the neglect to provide medical aid or attendance:—Held, that under the above circumstances the conviction could not be sustained. *Reg. v. Morby*, 8 Q. B. D. 571; 51 L. J., M. C. 85; 46 L. T. 288; 30 W. R. 613; 46 J. P. 422; 15 Cox, C. C. 35.

— **Admission of Prisoner.]**—The evidence against a prisoner charged with manslaughter was an admission on his part, that, unfortunately, he was the man who shot the deceased; and the fact that, on their coming together, apparently

not in ill-humour, from the South Metropolitan Cemetery, where the prisoner was a watchman, but with which the deceased had no connexion, the prisoner said to the deceased, "Now, you mind, don't let me see you on my premises any more." At the time this was said, the wound had been given of which the deceased eventually died:—Held, that, in point of law, the evidence was sufficient to sustain the charge. *Reg. v. Morrison*, 8 C. & P. 22.

b. What Admissible.

To shew Danger of Violence, or Reasonable Apprehension of it.]—On an indictment for murder, the death having been caused by shot from a gun in the hands of the prisoner, evidence of former threats by deceased of deadly violence, with words and circumstances on the occasion in question likely to provoke similar threats, received as evidence of danger to life, of serious violence or reasonable apprehension of it, on the occasion, such as might excuse or justify recourse to a loaded firearm in self-defence. *Reg. v. Weston*, 14 Cox, C. C. 346.

Previous Expressions of Bad Feeling.]—Expressions denoting a bad feeling toward the deceased, made use of some time before the crime is committed, are admissible, but the jury must receive them with great caution. *Reg. v. Hagan*, 12 Cox, C. C. 357.

A. hires H. to murder P.—Evidence that H. murdered P. when A. charged with Murder of H.]—A. was indicted for the murder of H. It was opened, that A. having malice against P., had hired H. to murder him, and that H. did so; but that H. being detected, A. had murdered H. to prevent a discovery of his (A.'s) guilt respecting the murder of P. Evidence was given of expressions of malice used by A. towards P.:—Held, that the prosecutor might also give evidence to shew that H. was in fact the person by whom P. had been murdered. *Reg. v. Clewes*, 4 C. & P. 221.

Evidence of Res Gestæ.]—A man was indicted for the wilful murder of Jane Maria Clousen. The murder was committed on the night of the 25th or the morning of the 26th of April, 1871, at Eltham. The deceased was discovered in a dying state in Kidbrooke-lane. She had lived in the prisoner's family, and suspicion attached to him. One of the witnesses, Fanny Hamilton, called by the prosecution, proved that for ten days prior to the 25th of April, the deceased had lodged in her house, that on the evening of that day she went out in her company, and that, after walking about for some time, they parted, when the deceased told her where she was going. It was proposed by the counsel for the crown to ask the question, "What did she say to you?" To this the prisoner's counsel objected, on the ground that whatever was said was said in the prisoner's absence, and he had no means of cross-examining upon it. It was thereupon contended by the counsel for the crown, that it was a declaration so far accompanying the act itself as to render it part of the res gestæ: the judge refused to permit the question to be put. *Reg. v. Pook*, 13 Cox, C. C. 172, n.; S. P., *Reg. v. Wainwright*, 13 Cox, C. C. 171.

A. was charged with manslaughter, in killing

B., by driving a cabriolet over him. C. saw the cabriolet drive by, but did not see the accident, and immediately afterwards, on hearing B. groan, C. went up to him, when B. made a statement as to how the accident had happened:—Held, that this statement, being made at the moment of the accident occurring, was receivable on the trial of A. for the manslaughter of B. *Reg. v. Foster*, 6 C. & P. 325.

Statements made by the deceased to the first person who comes up after he has been wounded, are admissible as part of the *res gestæ*. The deceased died from the effects of a wound on his head, inflicted by a stick. A girl in the neighbourhood heard a cry, and coming out found the deceased standing with his cap in his hand, and apparently weak and injured. The deceased did not survive more than a few hours:—Held, the statement made by the deceased to the witness immediately on her coming up, complaining of the injury, was admissible in evidence, being part of the *res gestæ*. *Reg. v. Lunny*, 6 Cox, C. C. 477.

On an indictment for murder, it appearing that the deceased, with her throat cut through, came suddenly out of a room, in which she left the prisoner, who also had his throat cut, and was speechless, and that she said something immediately after coming out of the room, and a few minutes before she died—the question being whether murder or suicide:—Held, that her statement was not admissible as part of the *res gestæ*. *Reg. v. Beddingfield*, 14 Cox, C. C. 341.

Statements and Reports made in Absence of Prisoner.]—When the deceased person, a constable, in the course of his duty, made, shortly before his death, and in the absence of the accused, a verbal statement in the nature of a report to his superior officer (an inspector of police), as to where the deceased was going, and what he was going to do, such report being material for the case of the crown:—Held, that such statement and report were admissible for the prosecution. *Reg. v. Buckley*, 13 Cox, C. C. 293.

In a case of manslaughter, it was proved that the deceased was at an inn for three days, and that the innkeeper asked him what his name was, and that while there letters arrived at the inn directed in that name, which letters were delivered to the deceased, and received by him:—Held, that the innkeeper might be asked what name the deceased gave. *Reg. v. Timmins*, 7 C. & P. 499.

On a trial for murder by poisoning, statements made by the deceased in a conversation shortly before the time at which the poison is supposed to have been administered, are evidence to prove the state of his health at that time. *Reg. v. Johnson*, 2 C. & K. 354.

On the trial of a husband for the murder of his wife, a neighbour swore that a week before it was committed the wife had visited her house, bringing an axe and a carving-knife, and gave them to her to take care of:—Held, that the evidence of what was said by the wife to the witness on handing to her the instruments was admissible. *Reg. v. Edwards*, 12 Cox, C. C. 230.

Evidence of other Cases to negative Death by Accident.]—When a woman was charged with the

murder of her son by poison, and the defence was, that his death resulted from an accidental taking of such poison, evidence to prove that two other children of hers, and a lodger in her house, had died previously to the present charge from the same poison, was held to be admissible. *Reg. v. Cotton*, 12 Cox, C. C. 400.

Upon the trial of a woman for the murder of her infant by suffocation in bed, evidence to prove the previous death of her other children at early ages is admissible, although such evidence does not shew the causes from which those children died. *Reg. v. Roden*, 12 Cox, C. C. 630.

Upon an indictment for murder by poison of S. in October, 1877, evidence is admissible of the previous and subsequent deaths of J. and L., under like circumstances and from similar symptoms, to shew that the poisoning was not accidental. *Reg. v. Heesom*, 14 Cox, C. C. 14.

Where it is proved that a motive for the death of S. might exist, by the fact of the prisoner having insured the life of S. in a benefit insurance society, evidence may also be given upon the same indictment that there might be an equal motive for the deaths of J. and L., by shewing that they also were each of them insured by the prisoner in the same or kindred societies. *Id.*

On an indictment against a woman for the murder of her husband by arsenic, in September, evidence was tendered on behalf of the prosecution of arsenic having been taken by her two sons, one of whom died in December and the other in March subsequently, and also by a third son, who took arsenic in April following, but did not die. Proof was given of a similarity of symptoms in the four cases. Evidence was also tendered that she lived in the same house with her husband and sons, and that she prepared their tea, cooked their victuals, and distributed them to the four parties:—Held, that this evidence was admissible for the purpose of proving, first, that the deceased husband actually died of arsenic; secondly, that his death was not accidental; and that it was not inadmissible by reason of its tendency to prove or create a suspicion of a subsequent felony. *Reg. v. Geering*, 18 L. J., M. C. 215.

On an indictment for the murder of A., evidence is not admissible that three others in the same family died of similar poison, and that the prisoner was at all the deaths, and administered something to two of these patients. *Reg. v. Winslow*, 8 Cox, C. C. 397.

Upon the trial of a husband and wife for the murder of the mother of the former by administering arsenic to her, for the purpose of rebutting the inference that the arsenic had been taken by accident, evidence was admitted that the male prisoner's first wife had been poisoned nine months previously: that the woman who waited upon her and occasionally tasted her food, shewed symptoms of having taken poison; that the food was always prepared by the female prisoner; and that the two prisoners, the only other persons in the house, were not affected with any symptoms of poison. *Reg. v. Garner*, 4 F. & F. 346.

Former Cases treated by Surgeon.]—On an indictment for manslaughter, by reason of gross negligence and ignorance in surgical treatment, neither on the one side nor the other can evidence be gone into of former cases treated by the prisoner, but witnesses may be asked *causa scientiæ*

their opinion as to his skill. *Reg. v. Whitehead*, 3 C. & K. 202.

Evidence as to Effect of Noxious Substance.]

—On an indictment for manslaughter, where the death is occasioned by the application of a lotion to the skin, evidence may be given of the effect of the lotion when applied to other patients. *Reg. v. St. John Long*, 4 C. & P. 398.

c. Dying Declarations.

In Favour of the Accused.]—Dying declarations may be given in evidence in favour of the accused. *Reg. v. Seafie*, 1 M. & Rob. 551; 2 Lewin, C. C. 150.

As to Contents.]—Nothing can be evidence in a declaration in articulo mortis which would not be so if the party was examined. *Reg. v. Sellers*, Car. C. L. 233.

Credibility of.]—A dying declaration is equal, in point of sanction, to an examination on oath, but the opportunity of investigating the truth is very different. *Ashton's case*, 2 Lewin, C. C. 147.

Question of Admission for the Judge.]—Whether or not dying declarations were made under an apprehension of danger, must be determined by the judge, in order to receive or reject the evidence; and not by the jury after the evidence is received. *Reg. v. John*, 1 East, P. C. 357; *S. P.*, *Reg. v. Wellbourn*, 1 East, P. C. 358; *Reg. v. Hueks*, 1 Stark. 523; 1 Leach, 503, n.

Made in Answer to Questions.]—It is no objection against a declaration in articulo mortis, that it was made in answer to questions put to the deceased by the surgeon, and not a continuous statement made by the deceased. *Reg. v. Fagent*, 7 C. & P. 238.

It is no objection to the admissibility of a dying declaration that it was made in answer to leading questions. *Reg. v. Smith*, L. & C. 607.

Whose Declarations admissible.]—The declaration of a convict at the moment of execution could not be given in evidence as the declaration of a dying man, for, being attainted, his testimony could not have been received on oath. *Reg. v. Drummond*, 1 Leach, C. C. 337; 1 East, P. C. 353, n. But see 6 & 7 Vict. c. 85.

A declaration in articulo mortis, made by a child only four years old, is not admissible on the trial of an indictment for the murder of such child; because a child of such tender years cannot have that idea of a future state which is necessary to make such a declaration admissible. *Reg. v. Pike*, 3 C. & P. 598. See *Reg. v. Perkins*, 9 C. & P. 395.

On what Charges admissible.]—It is a general rule in criminal cases, that dying declarations are admissible only where the death of the deceased is the subject of the charge, and the circumstances of the death are the subject of the dying declaration; therefore, where a defendant had been convicted of perjury, and obtained a rule nisi for a new trial, pending which he shot the prosecutor, and on shewing cause against the rule for a new trial, an affidavit of the dying declarations of the prosecutor, relating to the

transaction out of which the prosecution for perjury arose, was produced:—Held, that it was inadmissible. *Reg. v. Mead*, 4 D. & R. 120; 2 B. & C. 605.

Dying declarations are admissible only where the death of the deceased is the subject of the charge, and the circumstances of the death the subject of the dying declaration. *Reg. v. Hind*, Bell, C. C. 253; 8 Cox, C. C. 300; 29 L. J., M. C. 147; 6 Jur., N. S. 514; 2 L. T. 253; 8 W. R. 421.

Therefore, on an indictment for feloniously using certain instruments upon the person of a woman with intent to procure a miscarriage, her dying declaration is inadmissible. *Id.*

A woman having had a rape committed upon her by two persons, the next day, in distress of mind, cut her throat, and being likely to die, a magistrate was sent for, and in the presence of the prisoners her deposition was properly taken. She was told she was likely to die, and she died a few days afterwards:—Held, that the deposition of the deceased was not admissible as a dying declaration, as it did not relate to the offence which caused the death. *Reg. v. Newton*, 1 F. & F. 641.

In trials for robbery, the dying declarations of the party robbed have been held to be inadmissible. *Reg. v. Lloyd*, 4 C. & P. 233.

Declarations in articulo mortis are not admissible on an indictment for administering medicine to procure abortion. *Reg. v. Hutchinson*, 2 B. & C. 608, n.

Declaration made before Statement as to Non-Recovery.]—On a trial for murder it was proved that the deceased, who lived a few hours after the wound was inflicted, made a statement, at the conclusion of which he exclaimed, "Oh, God! I am going fast; I am too far gone to say any more;" but he did not appear to have previously said anything about his condition, and there was no evidence, one way or the other, to shew that he was aware of it:—Held, that the statement was inadmissible as a dying declaration. *Reg. v. Nicolas*, 6 Cox, C. C. 120.

In order to render dying declarations admissible in evidence, the facts, to shew that the deceased was conscious of his state, must point to the time of the statement, and therefore declarations some days prior to an expression that the deceased "had given up all in this world," are inadmissible. *Reg. v. Qualter*, 6 Cox, C. C. 357.

General Rule.]—Statements by a deceased person who at the time thought he was dying, and had no hope of recovering, are admissible as dying declarations. *Reg. v. Howell*, 1 Den. C. C. 1; 1 C. & K. 689.

It is not sufficient that the person making declarations was dying, to constitute those declarations evidence unless the deceased was clearly and expressly warned that he could not live, or unless he had expressed his knowledge that he was dying. *Reg. v. Mooney*, 5 Cox, C. C. 318.

Onus on Prosecution.]—In order to render a statement of a deceased person, not on oath, evidence, the prosecution must shew that such person at the time of making the statement was distinctly aware of the approach of death, and

had no hope of possible recovery. *Reg. v. Mackay*, 11 Cox, C. C. 148.

Prospect of almost Immediate Death.]—To render the declaration of the deceased admissible on a trial for manslaughter, it must have been made by him under an impression of almost immediate dissolution; and it is not enough that the deceased should have thought that he would ultimately never recover. *Reg. v. Van Butchell*, 3 C. & P. 629.

To render a statement admissible as a dying declaration, it is not enough that it appears that the person making it was under the impression that death must ultimately ensue, but it is necessary that it should appear that the person was conscious at the time that death was actually imminent. *Reg. v. Forrester*, 4 F. & F. 857; 10 Cox, C. C. 368.

Surgeon taking more Favourable View.]—A dying declaration is admissible, if the declarant conceives himself to be past recovery, although the surgeon attending him may believe him to be progressing favourably. *Reg. v. Peel*, 2 F. & F. 21.

Slight Hope of Recovery.]—Any hope of recovery, however slight, existing in the mind of a deceased at the time of his making a declaration, will render it inadmissible as a declaration in articulo mortis; but where a person knew that he must die, and the magistrate, previously to his making the declaration, desired him, as a dying man, to tell the truth, and he replied that he would:—Held, that his declaration was admissible. *Reg. v. Hayward*, 6 C. & P. 157.

If the deceased thought she would recover at the time the declarations were made, they ought not to be received. *Reg. v. Wellbourn*, 1 East, P. C. 358; 1 Leach, C. C. 503, n.

In murder, the declarations of the deceased, after the mortal wound is given, may be received, though the party did not express any apprehension of approaching dissolution; but the examination of such a person taken by a magistrate, extrajudicially, cannot be received. *Reg. v. Woodcock*, 1 Leach, C. C. 500; 1 East, P. C. 354; *S. P.*, *Reg. v. Dingler*, 1 Leach, C. C. 504, n.; 1 East, P. C. 357.

Statements shewing Consciousness of Impending Dissolution.]—The deceased, shortly after the occurrence which resulted in her death, was seen standing at the door of a neighbour's house in a fainting condition, and apparently dying. She said, "I am dying, look to my children," and she then made a statement as to the cause of her injuries:—Held, that the statement then made was admissible in evidence as a dying declaration. *Reg. v. Goddard*, 15 Cox, C. C. 7.

Statements made behind the back of the prisoner are not admissible in evidence as dying declarations unless the person making them entertains at the time a settled hopeless expectation of immediate death. Answers in the affirmative to the following questions:—"Do you think you are in bodily danger, and in fear of death?" "You are not expecting to recover, are you aware that you will die?" "Do you fully and clearly understand what I am saying to you?" and the use of the expression, "I am sure I am going to die," do not indicate such a state of mind. *Reg. v. Osman*, 15 Cox, C. C. 1.

The declarations of a deceased person are evidence, though at the time they were made the deceased thought herself better, where she had uniformly said, both before and after they were made, and up to the time of her death, that she knew she should die. *Reg. v. Tinkler*, 1 East, P. C. 354.

Where the deceased said he was "a murdered man, and it would have been better if they had killed him on the spot than left him to linger, and that he thought he should never get over it," but he lived several weeks afterwards:—Held, that there was a *prima facie* case for the admissibility of declarations made at the time of those statements. But where the person to whom the declarations were made stated that he believed the words "murdered man" were not used in their literal sense, and that the deceased did not appear to have any immediate fear of death on his mind:—Held, that the case was taken out of the principle on which such declarations are receivable. *Reg. v. Qualter*, 6 Cox, C. C. 357.

If a person whose death is the subject of a charge of manslaughter expresses an opinion that she will not recover, and makes a declaration, and at a subsequent part of the same day asks a person whether he thinks she will "rise again":—Held, that this shewed such a hope of recovery as rendered the previous declaration inadmissible. *Reg. v. Fagant*, 7 C. & P. 238.

The deceased said, "I think myself in great danger:—"Held, that these words did not, necessarily, exclude all hope, and therefore that they were not admissible as a dying declaration. *Errington's case*, 2 Lewin, C. C. 148.

In a case of murder it appeared that two days before the death of the deceased the surgeon told her that she was in a very precarious state, and that on the day before her death, when she had become much worse, she said to the surgeon that she found herself growing worse, and that she had been in hopes she would have got better, but as she was getting worse, she thought it her duty to mention what had taken place. Immediately after this she made a statement:—Held, that this statement was not receivable in evidence as a declaration in articulo mortis, as it did not sufficiently appear that at the time of the making of it, the deceased was without hope of recovery. *Reg. v. Megson*, 9 C. & P. 418.

Where the deceased asked his surgeon if the wound was necessarily mortal, and on being told that recovery was just possible, and that there had been an instance where a person had recovered after such a wound, he said, "I am satisfied," and after this he made a statement:—Held, that it was not admissible as a declaration in articulo mortis, as it did not appear that the deceased thought himself at the point of death, for, being told that the wound was not necessarily mortal, he might still have a hope of recovery. *Reg. v. Christie*, Car. C. L. 232.

A person who was told by the surgeon that she would never recover, said, that she "hoped he would do what he could for her, for the sake of her family." He again told her that there was no chance of her recovery:—Held, that this shewed such a degree of hope in her mind, as to render a statement she then made inadmissible as a declaration in articulo mortis. *Reg. v. Crockett*, 4 C. & P. 544.

The deceased asked, "Shall I recover?" The surgeon said, "No." The patient grew better, but relapsed, and then repeated the question. The

surgeon said, "I think you will not recover." The deceased said, "I think so too." It was after this conversation, but not immediately, that the declaration which was proposed to be given in evidence was made:—Held, admissible. *Ash-ton's case*, 2 Lewin, C. C. 147.

On the question whether a declaration of a deceased person is admissible as a declaration in articulo mortis, the judge will consider whether the conduct of the deceased was that of a dying person, such as whether he gave directions respecting his funeral, his will, &c., and not merely the expressions he used, as to whether he thought he should or should not recover. *Ree v. Spilsbury*, 7 C. & P. 187.

Upon a trial for manslaughter, it was proved that the deceased, then being in such a state from the injuries he had received that it was impossible he could recover, and in fact death ensued eleven days afterwards, made a declaration, concluding with these words: "I have made this statement believing I shall not recover." On the same day, and shortly before making the declaration, he had stated, "I have seen the surgeon, and he has given me some little hope that I am better; but I do not myself think I shall ultimately recover." It was also proved, that on the occasion of this conversation he had said that he could not recover:—Held, that the statement being made under a belief of impending death, was properly received as a dying declaration. *Reg. v. Reany*, Dears. & B. C. C. 151; 7 Cox, C. C. 209; 26 L. J., M. C. 43; 3 Jur., N. S. 191.

A statement made by a deceased person, inculcating one who was on his trial for the murder of the deceased, if made under circumstances and after expressions which indicated a sense of impending danger of death, is admissible as a dying declaration. *Reg. v. Whitworth*, 1 F. & F. 382.

A magistrate's clerk administered an oath to a dying person, and she made a statement. He asked her if she felt she was likely to die? She said, "I think so." He said, "Why?" She replied, "From the shortness of my breath." He said, "It is with the fear of death before you that you make these statements?" and added, "Have you any present hope of your recovery?" She said, "None." He then proceeded to write out the deposition, and when finished read it to her, and asked her to correct any mistake that he might have made. She said, "No hope, at present, of my recovery," and he then inserted those words:—Held, that the declaration was inadmissible, as the words "at present," introduced by the deceased, were a qualification of her previous statement that she had no hope of recovery. *Reg. v. Jenkins*, 1 L. R., C. C. 187; 38 L. J., M. C. 82; 20 L. T. 372; 17 W. R. 621; 11 Cox, C. C. 250.

What Facts shew Consciousness of Impending Death.—In order to render a declaration in articulo mortis admissible in a case of manslaughter, it is not necessary to prove expressions of the deceased, that he was in apprehension of almost immediate death; but the judge will consider, from all the circumstances, whether the deceased had or had not any hope of recovery. *Ree v. Bonner*, 6 C. & P. 386.

The apprehension of danger may appear either from the express declaration of the deceased at the time, or may be inferred from the state of

the wound, or illness, or other circumstances indicating the same. *Ree v. John*, 1 East, P. C. 357.

A boy between ten and eleven years of age was mortally wounded, and died the next day. On the evening of the day on which he was wounded, he was told by a surgeon that he could not recover. The boy made no reply, but appeared dejected. It appeared from his answers to questions put to him, that he was aware that he would be punished hereafter if he said what was untrue:—Held, that a declaration made by him at this time was receivable in evidence on the trial of a person for killing him, as being a declaration in articulo mortis. *Reg. v. Perkins*, 9 C. & P. 395.

A dying declaration of a deceased cannot be admitted by the judge merely from his own notion of the nature of the wound as described (without any evidence that the deceased, at the time, believed himself about to die), unless, at all events, it is shown to have been such as must necessarily have caused death in a short time, and such as all men reasonably would suppose to be so. *Reg. v. Cleary*, 2 F. & F. 850.

On a trial of murder, the death having been caused by cutting the throat, all the vessels and arteries having been severed, and death therefore certain to ensue, and in fact ensuing almost immediately afterwards, a declaration having been made by deceased in writing (he having no power to speak), about five minutes before death, when he was actually dying, it was held by Denman, J., after consulting Cockburn, C. J., that the declaration might be admissible, and that they were not prepared to hold that it was not so; but that with reference to some decisions, and especially *Reg. v. Cleary* (2 F. & F. 850), it would be proper, if it was admitted, to grant a case for the Court for Crown Cases Reserved. *Reg. v. Morgan*, 14 Cox, C. C. 337.

On an indictment for murder, it appearing that the deceased, with her throat cut through, came suddenly out of a room, in which she left the prisoner, who also had his throat cut, and was speechless, and that she said something immediately after coming out of the room, and a few minutes before she died—the question being whether murder or suicide:—Held, that her statement was not admissible, either as a dying declaration or as part of the *res gestæ*. Sed quære, whether in such a case the act is complete until death takes place, and whether, as a dying declaration, it is not a question of fact, upon the surgical evidence, whether, from the nature of the wound, the person must not have been conscious of almost immediate death. *Reg. v. Beddingfield*, 14 Cox, C. C. 341.

Subsequent Hops of Recovery.—A declaration made under the belief of impending death was held admissible in evidence, even though the declarant at a later period of the day took a more cheerful view of her position, and thought that she would recover. *Reg. v. Hubbard*, 14 Cox, C. C. 565.

Where the deceased having said that he thought he should die, made a statement, and two or three days afterwards expressed his belief that he should recover, and he lived some days after that:—Held, that the statement was inadmissible. *Reg. v. Taylor*, 3 Cox, C. C. 84.

Length of Time between Declaration and Death.—A considerable length of time between

the making a statement and the time of death does not render the statement inadmissible. *Reg. v. Bernadotte*, 11 Cox, C. C. 316.

On a trial of murder, a written declaration of the deceased was put in evidence by the prosecution; the declaration was made before a magistrate. The deceased said, "Be quick, or I shall die," but did not die for nearly three weeks. The deceased was not sworn before making the declaration:—Held, that the declaration was admissible, for the deceased thought he was going to die, and the fact that he did not die for nearly three weeks would not render it inadmissible. *Id.*

The declarations of a deceased made on the day he was wounded, and when he believed he should not recover, are admissible, though he did not die until eleven days afterwards; and though the surgeon did not think his case hopeless, and continued to tell him so until the day of his death. *Rea v. Mosley*, 1 M. C. C. 97; 1 Lewin, C. C. 79.

Form of Taking.—A deposition made before a magistrate by a dying man, as to the cause of his death, need not, on the face of it, shew that it was made under circumstances which would render it admissible in evidence as a dying declaration; but that is a fact dehors the statement, and may be proved by parol testimony. *Reg. v. Hunt*, 2 Cox, C. C. 239.

If a declaration in articulo mortis is taken down in writing, and signed by the party making it, the judge will neither receive a copy of the paper in evidence, nor will he receive parol evidence of the declaration. *Rea v. Gay*, 7 C. & P. 230.

Parol evidence of dying declarations which have been reduced into writing cannot be received. *Rea v. Trowter*, 1 East, P. C. 356.

It is not absolutely necessary that the deceased should have been sworn. *Reg. v. Bernadotte*, 11 Cox, C. C. 316.

An examination of a man touching injuries which he received from the prisoner, if subsequently, on the death of the injured man from the injuries he has received, appended to a caption charging the prisoner with his murder, is inadmissible in evidence on that charge, although it may be admissible as a dying declaration. *Reg. v. Clarke*, 2 F. & F. 2.

7. TRIAL, SENTENCE AND PUNISHMENT.

Jurisdiction.—By 24 & 25 Vict. c. 100, s. 9, *where any murder or manslaughter shall be committed on land out of the United Kingdom, whether within the Queen's dominions or without, and whether the person killed were a subject of her Majesty or not, every offence committed by any subject of her Majesty in respect of any such case, whether the same shall amount to the offence of murder or of manslaughter, or of being accessory to murder or manslaughter, may be dealt with, inquired of, tried, determined and punished in any county or place in England or Ireland in which such person shall be apprehended or be in custody, in the same manner in all respects as if such offence had been actually committed in that county or place: provided that nothing herein contained shall prevent any person from being tried in any place out of England or Ireland for any murder or manslaughter committed out of England or Ireland, in the same manner as such person might have been tried before the passing of this*

act. (Former provision, 9 Geo. 4, c. 31, s. 7, which repealed 33 Hen. 8, c. 23, and 43 Geo. 3, c. 113, on this subject.)

By s. 10, *where any person, being feloniously stricken, poisoned or otherwise hurt upon the sea, or at any place out of England or Ireland, shall die of such stroke, poisoning or hurt in England or Ireland, or, being feloniously stricken, poisoned or otherwise hurt at any place in England or Ireland, shall die of such stroke, poisoning or hurt upon the sea, or at any place out of England or Ireland, every offence committed in respect of any such case, whether the same shall amount to the offence of murder or of manslaughter, or of being accessory to murder or manslaughter, may be dealt with, inquired of, tried, determined and punished in the county or place in England or Ireland in which such death stroke, poisoning or hurt shall happen, in the same manner in all respects as if such offence had been wholly committed in that county or place. (Former provision, 9 Geo. 4, c. 31, s. 8.)*

Seemable, that where guns are fired by one vessel at another vessel, and those on board her generally, those guns are to be considered as shot at each individual on board her. *Rea v. Bailey*, R. & R. C. C. 1.

— Offence Abroad by Alien Enemy.—A manslaughter committed in China by an alien enemy who had been a prisoner of war, and was then acting as a mariner on board an English merchant ship, could not be tried here under a commission issued in pursuance of 33 Hen. 8, c. 23, and 43 Geo. 3, c. 113, s. 36. *Rea v. Depardo*, 1 Taunt. 26; R. & R. C. C. 134.

— By British Subject of British Subject Abroad.—A British subject was indictable under 33 Hen. 8, c. 23, for the murder of another British subject, though the murder was committed within the dominion of a foreign independent state. *Rea v. Sawyer*, R. & R. C. C. 294; 2 C. & K. 101; S. P., *Rea v. Ealing*, Car. C. L. 105.

— By Foreigner of British Subject—Blow Abroad—Death on Ship.—A Spaniard, being in England, signed articles to serve in a ship "bound on a voyage to the Indian seas and elsewhere, on a seeking and trading voyage (not exceeding three years' duration), and back to the United Kingdom." On the ship's arrival at Zanzibar, an island in the Indian seas, which was under the dominion of an Arab king, the captain left the vessel (in pursuance of an understanding in England), and set up in trade, and, without the consent of the rest of the crew, engaged the Spaniard as an interpreter, the new captain of the ship not requiring him to serve on board. The ship went two or three short voyages without him, and returned to anchor a few hundred yards from the shore, in a roadstead of seven fathoms water, between Zanzibar and several other islands. The crew being on shore, a quarrel arose between the Spaniard and one of them, which led to blows by the Spaniard, which killed the other. The death took place on board ship. The Spaniard was brought to England, and indicted and tried in London under a special commission issued in pursuance of 9 Geo. 4, c. 31, s. 7:—Held, that he could not be convicted—first, as he was not a subject of his Majesty within the meaning of that section; and secondly, that as

the death was on shipboard, though the blows were given on shore, the offence could not be said to have been committed according to the words of the statute, "on land out of the United Kingdom." *Rea v. Mattos*, 7 C. & P. 458.

— **By British Subject of Foreigner Abroad.]**

—A British subject, who committed a murder in a foreign country upon a person who was not a British subject, was triable in England under 9 Geo. 4, c. 31, s. 7. *Reg. v. Azzopardi*, 1 C. & K. 203; 2 M. C. C. 289.

— **Ship taken by British Ship.]**—On the trial of Brazilians for the murder of P., it appeared, that a British cruiser, engaged in the prevention of the slave-trade, manned two boats, and sent them, commanded by a lieutenant, to board the Brazilian ship F. He did so, and finding her fitted up for slaves, but with no slaves on board, took her. After this, the lieutenant in the ship F. chased the ship E., also Brazilian, and sent a boat with P., who was a midshipman, to board her. She had slaves on board, and was captured, and part of her crew put on board the F., and left there, with the captain and cook of the F., as prisoners in charge of P. and British seamen. Neither the boats nor the F., after she was taken, had any instructions on board, but the cruiser had. Such of the crew of the E. as were thus put on board the F., and the cook of the F., all Brazilians, rose on P. and the British seamen and killed them all; but the captain of the F. would not join in the transaction. It was contended for the prosecution, that the F. and E. were legally taken under 5 Geo. 3, c. 113, and 7 & 8 Geo. 4, c. 74, and the Portuguese and Brazilian treaties as to slave-trading; and that the prisoners were in lawful custody, and the ship F. in the lawful custody of the Queen's officers. The prisoners were convicted of the murder, but a majority of the judges held the conviction wrong, on the ground of want of jurisdiction in an English court to try an offence committed on board the F.; and that, if the lawful possession of that vessel by the British Crown through its officers would be sufficient to give jurisdiction, there was no evidence brought before the court at the trial to shew that the possession was lawful. *Reg. v. Serva*, 2 C. & K. 53; 1 Den. C. C. 104.

— **Whether Ship is British.]**—Upon an indictment for murder, it was proved that the offence was committed upon the high seas, in a ship sailing under the British flag, which was foreign built, and all the crew of which, both officers and men, including the prisoner and the deceased, were foreigners. A certified copy of the register was put in evidence, in which one Rehder was described as the sole owner, and as being of London, and a merchant. Rehder was not a born Englishman, and there was no evidence of his having letters of denization, or that he had been naturalized:—Held, that the ship was not a British ship so as to give jurisdiction in this country to try the offence. *Reg. v. Bjornsen*, 10 Cox, C. C. 74; L. & C. 545; 34 L. J., M. C. 180; 11 Jur., N. S. 589; 12 L. T. 473; 13 W. R. 664.

— **By Foreigner of Foreigner Abroad—Death in England.]**—If one foreigner inflicts a blow on another foreigner in a foreign vessel on the

high seas, and the person so struck in a few days afterwards lands in England and dies there, the homicide is not cognizable by the courts of this country by virtue of 9 Geo. 4, c. 31, s. 8, or of 2 Geo. 2, c. 21, s. 1. *Reg. v. Lewis, Dears. & B. C. C. 182*; 7 Cox, C. C. 277; 26 L. J., M. C. 104; 3 Jur., N. S. 525.

— **By Foreigner on board British Ship.]**

A foreigner on board a British ship on the high seas owes allegiance to the law of England, and if he commits an offence against that law, he is triable under 18 & 19 Vict. c. 91, s. 21, by any court of justice in her Majesty's dominions, within the jurisdiction of which he may, at the time of the indictment, happen to be, provided that such court would have had cognizance of the crime if committed within the limits of its ordinary jurisdiction. *Reg. v. Sattler*, Dears. & B. C. C. 525; 7 Cox, C. C. 431; 27 L. J., M. C. 48; 4 Jur., N. S. 98.

Where a foreigner, having committed larceny in England, was followed to Hamburgh by an English police-officer, who arrested him without a warrant, and brought him against his will on board an English steamer trading between Hamburgh and London, and there kept him in custody in order that he might be tried for the larceny in England: the foreigner having shot the officer during the voyage, and whilst the steamer was on the high seas, under such circumstances that if the killing had been by an Englishman in an English county, the offence would have been murder:—Held, that the Central Criminal Court had jurisdiction under 18 & 19 Vict. c. 91, s. 21, to try the foreigner for the murder of the police-officer. *Id.*

— **Indictment.]**—In an indictment on 9 Geo. 4, c. 31, s. 7, for murder committed by a British subject abroad, it must be averred that the prisoner and the deceased were subjects of his Majesty. To prove the allegation that the prisoner was a subject of his Majesty, his own declaration is evidence to go to the jury, and it will be for them to say, whether they are satisfied that he is in fact a British-born subject. *Rea v. Helsham*, 4 C. & P. 394.

— **Trial—When separate Trials of different Prisoners.]**—Where two persons charged with murder by the same indictment had made statements implicating one another, and those statements were evidence for the prosecution, the court, upon the application of the counsel appearing for one prisoner, allowed them to have separate trials. *Reg. v. Jackson*, 7 Cox, C. C. 357.

— **Power to return Verdict of Manslaughter on Indictment for Murder.]**—On an indictment for murder the power of the jury to return a verdict of manslaughter for criminal negligence by the accused depends upon the circumstances of the particular case. *Reg. v. French*, 14 Cox, C. C. 328.

— **Verdict of Assault.]**—On an indictment for murder against several, one cannot be convicted of an assault committed on the deceased in a previous scuffle, such assault not being in any way connected with the cause of death. *Reg. v. Phelps*, 2 M. C. C. 240; Car. & M. 180.

For Concealing Birth.]—On an indictment for child murder, a conviction for concealing the birth cannot be supported. *Reg. v. Hicks*, 2 M. & Rob. 302.

Sentence and Execution.]—By 24 & 25 Vict. c. 100, s. 2, upon every conviction for murder the court shall pronounce sentence of death, and the same may be carried into execution, and all other proceedings upon such sentence and in respect thereof may be had and taken, in the same manner in all respects as sentence of death might have been pronounced and carried into execution, and all other proceedings thereupon and in respect thereof might have been had and taken, before the passing of this act, upon a conviction for any other felony for which the prisoner might have been sentenced to suffer death as a felon.

By s. 3, the body of every person executed for murder shall be buried within the precincts of the prison in which he shall have been last confined after conviction, and the sentence of the court shall so direct.

By 31 & 32 Vict. c. 24, capital punishment for murder is to be carried out within the prison walls.

Sentence of Death—Sentence for another Offence.]—A man upon whom sentence of death has passed ought not, while under that sentence, to be brought up to receive judgment for another felony, although he was under that sentence when he was tried for the other felony, and did not plead his prior attainder. *Reg. v. Brady*, R. & R. C. C. 268.

Sentence—Form of.]—The time and place of the execution of a convicted felon form no part of the sentence. *Reg. v. Doyle*, 1 Leach, C. C. 67.

A judge might, if he saw fit, have ordered a person convicted of murder to be executed immediately, or at any time within 48 hours after the conviction, as he might have done in any other capital felony. *Reg. v. Wyatt*, R. & R. C. C. 230.

It was not essential to award the day of execution in the sentence, the 25 Geo. 2, c. 37, being in that respect only directory; and if a wrong day was awarded, it would not vitiate the sentence, if the mistake was discovered and set right during the assizes. *Id.*

The bodies of executed murderers were by the common law at the king's disposal, and therefore the court could not direct them to be hung in chains. *Reg. v. Hall*, 1 Leach, C. C. 21.

Quære, whether on passing sentence of death on a conviction for murder, the award of dissection and anatomizing, in pursuance of 25 Geo. 3, c. 37, was an essential part of the sentence to be pronounced by the judge. *Reg. v. Fletcher*, R. & R. C. C. 58.

The omission of it might be remedied by the judge going again into court after adjournment, from his lodgings, and ordering the prisoner to be again brought up, and then passing the proper judgment, as the sentence might be corrected or altered at any time during the assizes. *Id.*

Recorded.]—Sentence of death might under 6 & 7 Will. 4, c. 30, be recorded against a

person convicted of murder. *Reg. v. Hogg*, 2 M. & Rob. 381.

Habeas Corpus—Certiorari—Time.]—On a conviction for murder, in which the prisoners were brought up by habeas corpus, and the record by certiorari, the court gave the prisoners three days' time to examine the record and instruct counsel to shew cause why execution should not be awarded against them. *Reg. v. Garside*, 4 N. & M. 33; 2 A. & E. 266.

The attorney-general is entitled, as of course, to a habeas corpus and certiorari, to bring up a prisoner and the record of his conviction in case of felony. *Id.*

Pleas why Sentence should not pass.]—A proclamation promising a pardon cannot be pleaded as a pardon. *Id.*

But where such proclamation had been made, the court, in their discretion, deferred the awarding of execution upon the sentence, until the prisoner should have had time to apply to the secretary of state for a pardon, according to the terms of the proclamation. *Id.*

Semble, that a pardon after judgment may be pleaded *ore tenus*, and in bar of execution; and there may be a demurrer to such a plea *ore tenus*. *Id.*

Where a woman who had been condemned to death did not, when called upon to say why execution should not be done upon her, plead her pregnancy, the court would not permit that question to be formally inquired into, at the suggestion of her counsel that she was in fact pregnant. *Reg. v. Hunt*, 2 Cox, C. C. 261.

Sheriff—Jurisdiction of Queen's Bench over.]—The court of King's Bench has authority to order the sheriff of any county, or the marshal of the court, to carry into execution a sentence of death, pronounced by a judge under a commission of oyer and terminer and general gaol delivery. *Reg. v. Garside*, 4 N. & M. 33; 2 A. & E. 266.

Duty of.]—A sheriff is not bound, upon service of a copy of the calendar of prisoners signed by a justice of gaol delivery at the assizes, to execute prisoners against whom sentence of death has been passed, unless such prisoners are in his legal custody. *Reg. v. Antrobus*, 4 N. & M. 565; 2 A. & E. 798; 1 H. & W. 96; 6 C. & P. 784.

Where the sheriff has the custody of a prisoner, the judgment of the court passing sentence of death upon him is, without any warrant or copy of the calendar, sufficient to authorize and require the sheriff to do execution; the copy of the calendar signed by the judge is a mere memorial. *Id.*

8. CONSPIRING OR SOLICITING TO COMMIT MURDER.

Statute.]—By 24 & 25 Vict. c. 100, s. 4, all persons who shall conspire, confederate and agree to murder any person, whether he be a subject of her Majesty or not, and whether he be within the Queen's dominions or not, and whosoever shall solicit, encourage, persuade, or endeavour to persuade, or shall propose to any person to murder any other person, whether he

be a subject of her Majesty or not, and whether he be within the Queen's dominions or not, shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not more than ten and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour.

What is—Publication in Newspaper.]—M. was indicted under 24 & 25 Vict. c. 100, s. 4. The encouragement and endeavour to persuade to murder, proved at the trial, were the publication and circulation by him of an article, written in German, in a newspaper published in that language in London, exulting in the recent murder of the Emperor of Russia, and commending it as an example to revolutionists throughout the world. The jury were directed that if they thought that by the publication of the article M. did intend to, and did, encourage or endeavour to persuade any person to murder any other person, whether a subject of her Majesty or not, and whether within the Queen's dominions or not, and that such encouragement and endeavouring to persuade was the natural and reasonable effect of the article, they should find him guilty:—Held, that such a direction was correct, and that the publication and circulation of a newspaper article might be an encouragement, or endeavour to persuade to murder, within s. 4 of 24 & 25 Vict. c. 100, although not addressed to any person in particular. *Reg. v. Most*, 7 Q. B. D. 244; 50 L. J., M. C. 113; 44 L. T. 823; 29 W. R. 758; 45 J. P. 696; 14 Cox, C. C. 583.

—By Letter not received by Addressee.]—The prisoner was indicted under 24 & 25 Vict. c. 100, s. 4, for that he "did solicit H. to murder K.," and in a second count for that he "did endeavour to persuade H. to murder K." The prisoner wrote and posted a letter addressed to H., in which he requested H. to murder K. The letter fell by accident into the hands of a third person, and never reached H.:—Held, that the evidence would not sustain a conviction on either of the counts. *Reg. v. Fox*, 19 W. R. 109. *Cp. Reg. v. Ransford*, 31 L. T. 488.

Evidence—Attempt to Murder another Person.]—Evidence that A. was privy to a plot to murder B. by explosive machines, is sufficient to go to the jury on counts charging A. with the murder of C. (accidentally killed by the explosion), and with conspiring to murder him. *Reg. v. Bernard*, 1 F. & F. 240.

—Admissibility of Letters found on Prisoner.]—At a period of the trial when it had been proved that the grenades by which the death in question had been caused had been ordered by A.; but when there was no evidence to connect A. with the prisoner, it was proved that a letter in A.'s handwriting, bearing a memorandum in the hand of the prisoner, was found at his residence after his arrest upon the present charge:—Held, that such letter was admissible against him, not upon the ground that A. was a co-conspirator, but upon the ground that it was found in the possession of the prisoner, and was relevant to this inquiry. *Id.*

Conspiracy to Commit Murder.]—Soc ante, CONSPIRACY.

9. ATTEMPTS TO MURDER.

a. By administering Poison.

Statute.]—By 24 & 25 Vict. c. 100, s. 11, whoever shall administer to, or cause to be administered to, or to be taken by any person, any poison or other destructive thing, or shall by any means whatsoever wound or cause any grievous bodily harm to any person, with intent in any of the cases aforesaid to commit murder, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (Former enactment, 7 Will. 4 & 1 Vict. c. 85, s. 2.)

And by s. 14, whoever shall attempt to administer to, or shall attempt to cause to be administered to, or to be taken by any person, any poison or other destructive thing, with intent to commit murder, shall, whether any bodily injury be effected or not, be guilty of felony. (Punishment as in last section. Former enactments, 9 Geo. 4, c. 31, s. 11, and 7 Will. 4 & 1 Vict. c. 85, s. 3.)

What is an Administering.]—It is not an administering of poison unless the poison is taken into the stomach. Therefore, where A. was indicted for administering poison to a woman, with intent to murder her; and the proof was that he gave her a piece of cake which contained arsenic and sulphate of copper, which she put into her mouth, but which she spit out again without having swallowed any part of it:—Held, that it was not sufficient to convict. *Reg. v. Cadman*, Car. C. L. 237; 1 M. C. C. 114.

If a servant put poison into a coffee-pot which contained coffee, and when her mistress came down to breakfast, the servant told the mistress that she had put the coffee-pot there for her (the mistress's) breakfast, and the mistress drank the poisoned coffee—this was a causing the poison to be taken, within 9 Geo. 4, c. 31, s. 11. *Reg. v. Harley*, 4 C. & P. 369.

If A. sent poison intending it for B., and with intent to kill B., and it came into the possession of C., who took it, A. might be indicted on 9 Geo. 4, c. 31, s. 11, for administering it to C. *Reg. v. Lewis*, 6 C. & P. 161.

The delivery of poison to an agent, with directions to him to cause it to be administered to another under such circumstances that, if administered, the agent would be the sole principal felon, was not an attempt to administer poison within the 7 Will. 4 & 1 Vict. c. 85, s. 3. *Reg. v. Williams*, 1 C. & K. 589; 1 Den. C. C. 39.

A person who at the same time administers a poison and its antidote does not administer poison (per Alderson). *Reg. v. Cluderay*, 1 Den. C. C. 515; 2 C. & K. 907; T. & M. 219; 4 Cox, C. C. 84; 19 L. J., M. C. 119; 14 Jur. 71.

Putting poison in a place where it is likely to be found and taken, if done with an intent to murder, was an attempt to administer poison

within 7 Will. 4 & 1 Vict. c. 85, s. 3. *Reg. v. Dale*, 6 Cox, C. C. 14.

Poison.—What is.]—Administering unbroken *cocculus indicus* berries to an infant was administering poison within 7 Will. 4 & 1 Vict. c. 85, s. 2, although it was proved that the berries were not poisonous till the exterior or pod was broken, and that by reason of the weakness of the infant's digestive organs, the berries were innocuous. *Reg. v. Cludera*, 1 Den. C. C. 515; 2 C. & K. 907; T. & M. 219; 4 Cox, C. C. 84; 19 L. J., M. C. 119; 14 Jur. 71.

Indictment.]—A prisoner was indicted for mixing sponge with milk, and administering it with intent to poison. The indictment was insufficient, because it did not aver that the sponge was of a deleterious or a poisonous nature. *Rev. v. Powles*, 4 C. & P. 571.

Evidence.]—An indictment for causing poison to be taken by A. with intent to murder A. is not sustained by evidence shewing that the poison, although taken by A., was intended for another person. *Reg. v. Ryan*, 2 M. & Rob. 213.

On an indictment for administering poison with intent to murder, the police having, in consequence of certain information, found the bottle containing the poison in a place used by the prisoner, are bound to disclose from whom they had the information. *Reg. v. Richardson*, 3 F. & F. 693.

b. By Shooting, Wounding, Drowning, Suffocating or Strangling.

Statute.]—By 24 & 25 Vict. c. 100, s. 14, *whoever shall shoot at any person, or shall, by drawing a trigger or in any other manner attempt to discharge any kind of loaded arms at any person, or shall attempt to drown, suffocate or strangle any person, with intent, in any of the cases aforesaid, to commit murder, shall, whether any bodily injury be effected or not, be guilty of felony, and, being convicted thereof, shall be liable at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.* (Former enactment, 7 Will. 4 & 1 Vict. c. 85, s. 3.)

And by s. 11, *whosoever shall, by any means whatsoever, wound or cause any grievous bodily harm to any person, with intent to commit murder, shall be guilty of felony.* (Punishment as in last section. Former provisions, 9 Geo. 4, c. 31, ss. 11, 12, and 7 Will. 4 & 1 Vict. c. 85, s. 2.)

Attempt to Discharge Firearms.]—B. drew a loaded pistol from his pocket for the purpose of murdering S., but before he had time to do anything further in pursuance of his purpose the pistol was snatched out of his hand, and he was at once arrested:—Held, that the offence was not within s. 15 of 24 & 25 Vict. c. 100, under which section the prisoner had been tried and convicted. *Reg. v. Brown*, 10 Q. B. D. 381; 52 L. J., M. C. 49; 48 L. T. 270; 31 W. R. 460; 47 J. P. 327; 15 Cox, C. C. 199.

Semble, that the offence was within s. 14 of

24 & 25 Vict. c. 100. *Reg. v. St. George* (9 C. & P. 483) and *Reg. v. Lewis* (9 C. & P. 523) doubted. *Id.*

If a person, intending to shoot another, put his finger on the trigger of a loaded pistol, but was prevented from pulling the trigger, this was not an attempt to discharge loaded arms by drawing a trigger, or in any other manner, within 7 Will. 4 & 1 Vict. c. 85, ss. 3, 4, as the words, "in any other manner," in that statute, meant something analogous to drawing the trigger, which was the proximate cause of the loaded arms going off. *Reg. v. St. George*, 9 C. & P. 483.

The applying a lighted match to a loaded match-lock gun, or the striking the percussion cap of a percussion gun, was a sufficient attempt within these enactments. *Id.*

An indictment on 7 Will. 4 & 1 Vict. c. 85, ss. 3 and 4, charged the prisoner with attempting to discharge at the prosecutor a certain blunderbuss, loaded with gunpowder, and divers leaden shots. The prisoner on a refusal by the prosecutor to give up some title-deeds, addressed him in these words, "Then you are a dead man," and immediately unfolded a greatcoat which he had on his arm, and took out a blunderbuss, but was not able to raise it to his shoulder, or point it directly at the prosecutor, before he was seized. The blunderbuss was found to be very heavily loaded, but the flint had dropped out, and was discovered between the lining of the great coat:—Held, that the evidence was not sufficient to sustain the charge in the indictment. *Reg. v. Lewis*, 9 C. & P. 523.

What are Loaded Arms.]—By 24 & 25 Vict. c. 100, s. 19, *any gun, pistol, or other arms which shall be loaded in the barrel with gunpowder or any other explosive substance, and ball, shot, slug or other destructive material, shall be deemed to be loaded arms within the meaning of this act, although the attempt to discharge the same may fail from want of proper priming, or from any other cause.*

G. was charged with a felonious attempt to shoot. He was proved to have presented a pistol at a man, and to have pulled the trigger, but the pistol did not go off. On examining the pistol, it was found that, if it ever had been primed, it would have been impossible for the priming to have fallen out, and the pistol must have gone off:—Held, that there was no case to go to the jury. *Reg. v. Gamble*, 10 Cox, C. C. 545.

Before this Enactment.]—A rifle which was loaded, but which for want of proper priming would not go off, was not a loaded arm within the 7 Will. 4 & 1 Vict. c. 85, s. 3; and the pointing a rifle thus circumstanced at a person, and pulling the trigger of it, whereby the cock and hammer were thrown, and the pan opened, did not warrant a conviction of felony under s. 3. *Reg. v. James*, 1 C. & K. 530.

In order to constitute the offence of attempting to discharge loaded fire-arms, within 43 Geo. 3, c. 58, they must have been so loaded as to be capable of doing the mischief intended. *Rev. v. Carr*, R. & R. C. C. 377; S. P., *Rev. v. Whitley*, 1 Lewin, C. C. 123.

If a pistol was loaded with gunpowder and ball, but its touch-hole was plugged, so that it could not by possibility be fired, this was not loaded arms, within 9 Geo. 4, c. 31, ss. 11, 12. *Rev. v. Harris*, 5 C. & P. 159.

Where on an indictment on 43 Geo. 3, c. 58, for maliciously shooting at a person, it appeared that the instrument was fired so near, and in such a direction, as to be likely to kill or do other grievous bodily harm to such person, and with an intent that it should do so, the case was within that act, although it was loaded with powder and paper only. *Reg. v. Kitchen, R. & R. C. C. 95.*

A. sent a tin box to B., containing three pounds of gunpowder, and two detonators, which were intended to ignite the gunpowder when any person opened the box, and so destroy the person who opened it:—Held, that this was not an attempt to discharge loaded arms at B. within 9 Geo. 4, c. 31, ss. 11, 12. *Reg. v. Mountford, 7 C. & P. 242; 1 M. C. C. 441.*

What sufficient Evidence.]—The fact of firing a gun into a room of A.'s house, with intent to shoot A., the prisoner supposing him to be in the room, will not support a charge of shooting at A., if he is not shewn to be in the room, or within reach of the shot. *Reg. v. Lovel, 2 M. & Rob. 39.*

Intention to Shoot different Person.]—A person intending to shoot at and kill L., shot at H., mistaking him for L., but did not kill H. On an indictment for shooting at H., with intent to murder H., the judge left it to the jury to say whether there was an intent to murder H.; but he laid it down, that the law infers that a party intends to do that which is the immediate and necessary effect of the act which he commits. The jury found that the prisoner did not intend to do any harm to H., and the judge directed an acquittal to be recorded. *Reg. v. Holt, 7 C. & P. 519.*

An indictment under 9 Geo. 4, c. 31, s. 12, for maliciously shooting at A., was supported, if he was struck with the shot, though the gun was aimed at a different person. *Reg. v. Jarvis, 2 M. & Rob. 40.*

If intending to murder A., and supposing B. to be A., a person shoots at and wounds B., he may be convicted of wounding B., with intent to murder him. *Reg. v. Smith, Dears. C. C. 559; 25 L. J., M. C. 29; 1 Jur., N. S. 1116.*

Intention to Murder must be Present.]—On an indictment on 7 Will. 4 & 1 Viet. c. 85, s. 2, for the offence of inflicting an injury dangerous to life, with intent to murder, the jury ought not to convict unless satisfied that the prisoner had in his mind a positive intention to murder; and it is not sufficient that it would have been a case of murder if death had ensued. *Reg. v. Cruise, 8 C. & P. 541.*

What is a Shooting.]—A. had the barrels of a double-barrelled percussion gun detached from the stock and lock, and by striking the percussion cap which was on the nipple of one of the barrels, he fired it and shot B.:—Held, to be within 9 Geo. 4, c. 31, ss. 11, 12. *Reg. v. Coates, 6 C. & P. 394.*

Gamekeepers being in a preserve between twelve and one at night, heard the firing of two guns, and proceeding in the direction of the sound, met with two persons who neither had guns nor game upon them, nor were either found near them. The gamekeepers immediately seized them without calling on them to surrender, or in any way notifying to them who they

were. The keepers were wounded, one of them seriously:—Held, that the prisoner who wounded them might under the circumstances, and taking into consideration the situation and the time of the night, be properly convicted under 9 Geo. 4, c. 31, ss. 11, 12. *Reg. v. Taylor, 7 C. & P. 266.*

Indictment.]—Upon the trial of an indictment for shooting, with intent to murder a person unknown, it must be proved that there was an intent on the part of the prisoner to murder some particular person. *Reg. v. Lallement, 6 Cox, C. C. 204.*

In an indictment for maliciously shooting, under 7 Will. 4 & 1 Viet. c. 85, s. 4, it was sufficient to say, "with a certain loaded gun," without going on to state with what it was loaded. *Reg. v. Cox, 3 Cox, C. C. 58.*

If an indictment for shooting another, with intent to murder, in all the counts avers that the pistol was loaded with powder and a leaden bullet, it must appear that the pistol was loaded with a bullet, or the prisoner will be entitled to an acquittal. *Reg. v. Hughes, 5 C. & P. 126. See Reg. v. Oxford, 9 C. & P. 525.*

On an indictment for maliciously shooting, one act of shooting may be laid in one set of counts, as being with intent to murder H.; and in another set of counts as with intent to murder L. *Reg. v. Holt, 7 C. & P. 519.*

An indictment which charges that the prisoner feloniously assaulted J. H., and, by feloniously "drawing the trigger of a pistol, loaded with gunpowder and a leaden bullet, then and there feloniously and maliciously did attempt to discharge the said pistol at J. H.," with intent to murder him, is good, without stating that "the said pistol" was "so loaded as aforesaid." *Reg. v. Baker, 1 C. & K. 254.*

Evidence.]—Upon an indictment for maliciously shooting, it appeared that there were two shootings; but it being questionable whether the first shooting was by accident or design:—Held, that proof of the prisoner having intentionally shot at the person the second time, was evidence to shew that the first was wilful. *Reg. v. Voke, R. & R. C. C. 531.*

Evidence of a wound having been made by the contents of a pistol, although no ball was found, and of its having made a loud report, with reference to its size, is sufficient to go to a jury of its having been loaded with ball. *Reg. v. Weston, 1 Leach, C. C. 247.*

c. By the Explosion of Gunpowder, &c.

Statute.]—By 24 & 25 Vict. c. 100, s. 12, *whoever, by the explosion of gunpowder or other explosive substance, shall destroy or damage any building with intent to commit murder, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour and with or without solitary confinement. (Former enactment, 9 & 10 Viet. c. 25, s. 2.)*

Evidence of Character of Explosive.]—Upon a charge of murdering a person named by means of explosive grenades, evidence of the death

and wounds suffered by others at the same time, is admissible for the purpose of proving the character of the grenades. *Reg. v. Bernard*, 1 F. & F. 240.

Evidence of Maker connected with Prisoner.]

—A witness being called to prove that he manufactured certain grenades, by which the death in question had been caused:—Held, that the name of the person who gave the order for them might be asked as a fact in the transaction, even though he had not then been shewn to be connected with the prisoner. *Id.*

d. By Setting Fire to or Casting Away Ships.

Statute.]—By 24 & 25 Vict. c. 100, s. 13, *who-so-ever shall set fire to any ship or vessel, or any part thereof, or any part of the tackle, apparel, or furniture thereof, or any goods or chattels being therein, or shall cast away or destroy any ship or vessel, with intent in any of such cases to commit murder, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (Former enactment, 7 Will. 4 & 1 Vict. c. 89, s. 4.)*

e. Preventing Rescue from Shipwreck.

Statute.]—By 24 & 25 Vict. c. 100, s. 17, *who-so-ever shall unlawfully and maliciously prevent or impede any person, being on board of or having quitted any ship or vessel which shall be in distress or wrecked, stranded, or cast on shore, in his endeavour to save his life, or shall unlawfully and maliciously prevent or impede any person in his endeavour to save the life of any such person as in this section first aforesaid, shall be guilty of felony. (Punishment same as in last section. Former provision, 7 Will. 4 & 1 Vict. c. 89, s. 7.)*

f. By other Means.

Statute.]—By 24 & 25 Vict. c. 100, s. 15, *who-so-ever shall, by any means other than those specified in any of the preceding sections of this act, attempt to commit murder, shall be guilty of felony. (Punishment same as in the last but one preceding section.)*

Suicide not within this Act.]—An attempt to commit suicide is not an attempt to commit murder within 24 & 25 Vict. c. 100, and is not merged in any of the felonious attempts to commit murder made punishable by that act, but remains a misdemeanor at common law triable by the court of quarter sessions. *Reg. v. Burgess*, L. & C. 258; 9 Cox, C. C. 247; 32 L. J., M. C. 55; 7 L. T. 472; 11 W. R. 96.

Abandonment of Child.]—A female abandoned her infant child, having first deposited it in the bottom of a dry ditch among some nettles, by which it was not hurt; and, in consequence of being shortly afterwards found by other persons, had not experienced any inconvenience from the exposure:—Held, that she could not be convicted

of an assault with intent to murder the child. *Reg. v. Renshaw*, 2 Cox, C. C. 385; 11 Jur. 615.

Wife Jumping out of Window to avoid Violence.]—Where a woman jumps out of window for the purpose of avoiding the violence of her husband, and sustains dangerous bodily injury, the husband cannot be convicted of an attempt to murder, unless he intended by his conduct to make her jump out of the window. *Reg. v. Donovan*, 4 Cox, C. C. 400.

B. ASSAULT, BATTERY, WOUNDING, &c.

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1. SHOOTING, WOUNDING, &c., WITH INTENT TO MAIM, &c.

Statute.]—By 24 & 25 Vict. c. 100, s. 18, *who-so-ever shall unlawfully and maliciously, by any means whatsoever, wound or cause any grievous bodily harm to any person, or shoot at any person, or, by drawing a trigger or in any other manner, attempt to discharge any kind of loaded arms at any person, with intent, in any of the cases aforesaid, to maim, disfigure or disable any person, or to do some other grievous bodily harm to any person, or with intent to resist or prevent the lawful apprehension or detainer of any person, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (Previous provision, 7 Will. 4 & 1 Vict. c. 85, s. 4.)*

As to what are loaded arms, see s. 19, and ante, col. 476.

By s. 20, *whosoever shall unlawfully and maliciously wound or inflict any grievous bodily harm upon any other person, either with or without any weapon or instrument, shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for the term of five years* (27 & 28 Vict. c. 47), *or to be imprisoned for any term not exceeding two years, with or without hard labour.* (Former provision, 14 & 15 Vict. c. 19, s. 4.)

Shooting — Pistol not going off. — G. was charged with a felonious attempt to shoot. He was proved to have presented a pistol at a man, and to have pulled the trigger, but the pistol did not go off. On examining the pistol, it was found that, if it ever had been primed, it would have been impossible for the priming to fall out, and the pistol must have gone off:—Held, that there was no case to go to the jury. *Reg. v. Gamble*, 10 Cox, C. C. 545.

Cutting—Malice. — On an indictment for maliciously cutting, malice against the individual cut is not essential, general malice is sufficient. *Reg. v. Hunt*, 1 M. C. C. 93.

The question is not what the wound is, but what wound was intended. *Id.*

Where a party having a deadly weapon lawfully in his possession, in his own defence, but without having previously retreated as far as possible, cut a person who was assaulting, he was guilty of felony, under 7 Will. 4 & 1 Vict. c. 85, s. 4, if he intended grievous bodily harm. *Reg. v. Odgers*, 2 M. & Rob. 479.

— **What is.** — Cutting a female child's private parts, so as to enlarge them for the time, was considered as doing her grievous bodily harm, within 43 Geo. 3, c. 58, and done with that intent, although the hymen was not injured, the incision was not deep, and the wound eventually was not dangerous. *Reg. v. Cox, R. & R. C. C. 362*; 1 Leach, C. C. 71.

A striking over the face and head with the sharp or claw part of a hammer was a sufficient cutting, within 43 Geo. 3, c. 58. *Reg. v. Atkinson*, R. & R. C. C. 104.

— **To Resist Apprehension.** — On an indictment for cutting, it appeared that the prisoner was seen in the night entering an outhouse with intent to commit a felony, by a person who went and informed the prosecutor of it. The latter in about a quarter of an hour went in search of the prisoner to apprehend him. The prisoner had left the prosecutor's premises, and was found in a neighbouring garden, crouched down under a tree, with a drawn sword in his hand. The prosecutor apprehended the prisoner, who cut and wounded him. It was objected that the prosecutor had no right to apprehend the prisoner, and that if death had ensued, it would have been manslaughter only. The prisoner was convicted, and the judges held the conviction right. *Reg. v. Howorth*, Car. Supp. 231; 1 M. C. C. 207.

— **Whether, if Death ensues, it would be Murder or not.** — On a charge of feloniously cutting, with intent to do grievous bodily harm,

it was immaterial whether, if death had ensued, the crime would have been murder or manslaughter. *Reg. v. Nicholls*, 9 C. & P. 267.

Wounding—What is. — To constitute a wound it is necessary that there should be a separation of the whole skin; and a separation of the cuticle or upper skin only is not sufficient. *Reg. v. M'Loughlin*, 8 C. & P. 635.

In criminal cases, the definition of a wound is, an injury to the person by which the skin is broken. *Moriarty v. Brooks*, 6 C. & P. 684; *S. P., Rex v. Beckett*, 1 M. & Rob. 526.

A blow given with a hammer on the face, which broke the lower jaw in two places; the skin was broken internally, though not externally, and there was not much blood; was a wounding within 7 Will. 4 & 1 Vict. c. 85, s. 4. *Reg. v. Smith*, 8 C. & P. 173.

A. asked permission at the house of B. to go and take some ashes, which he was allowed to do; but as he was coming out B.'s apprentice saw a copper tea-kettle among the ashes in A.'s basket, and told B. B. laid hold of A. to secure him, on the charge of stealing the tea-kettle, and in a scuffle A. and B. fell, and A. cut B. with a knife:—Held, to be a wounding within 7 Will. 4 & 1 Vict. c. 85, s. 4, provided that the jury was satisfied that A. had stolen the kettle, as B. had then a right to apprehend him. *Reg. v. Price*, 8 C. & P. 282.

Evidence of a violent kick on the private parts of a woman, which caused a flow of blood mingled with urine, for some time afterwards, was not a wounding within 7 Will. 4 & 1 Vict. c. 85, s. 4, no proof being given as to the precise point whence the blood originally came. *Reg. v. Jones*, 3 Cox, C. C. 441.

A rupture of the lining membrane of the urethra, followed by a small flow, such rupture being caused by a kick on the private parts of the prosecutor, is a wounding within 7 Will. 4 & 1 Vict. c. 85, s. 4. *Reg. v. Waltham*, 3 Cox, C. C. 442.

— **Must have been direct.** — To constitute the offence of wounding with intent to do grievous bodily harm, under 7 Will. 4 & 1 Vict. c. 85, s. 4, the wound must be direct, and therefore an injury occasioned by the prosecutor falling on some iron trams in consequence of a blow from the prisoner, was not within that statute. *Reg. v. Spooner*, 6 Cox, C. C. 392.

— **Whether, if Death ensues, it would be Murder or not.** — In a case of wounding with intent to do grievous bodily harm, it is not essential that, if death had ensued, the offence of the prisoner should be murder; therefore, if it appears that, had death ensued, the offence would be manslaughter only, this is no ground of acquittal of the felony. *Reg. v. Griffiths*, 8 C. & P. 248; 2 M. C. C. 40.

— **Character of Instrument.** — On an indictment for wounding, the jury, upon the question whether, if death had ensued, the offence would have been murder, should consider whether the instrument employed was, in its ordinary use, likely to cause death; or if it is an instrument not likely, under ordinary circumstances, to cause death, whether it was used in such an extraordinary manner as to make it likely to

cause death, either by continual blows or otherwise. *Rea v. Howlett*, 7 C. & P. 274.

— **What Intent.**—A broker and his man having levied a distress for rent, the man left in possession was ejected. The owner of the goods was not in the room at the time of the levy, and it was not proved that he was a party to the turning out of the man, or that he knew of the distress being levied, but on the broker and his assistants breaking open the outer door to re-enter, the prisoner struck one of the assistants with an axe on the forehead:—Held, that, under these circumstances, the prisoner must at least be found guilty of an assault; and also, that, although he might be found guilty of wounding, with intent to do grievous bodily harm, yet he could not be found guilty of wounding, with intent to maim and disable. *Reg. v. Sullivan*, Car. & M. 209.

— **What was, under the Repealed Statute of 9 Geo. 4, c. 31, ss. 11, 12.**—Breaking a person's collar bone, and bruising him, was not a wounding within 9 Geo. 4, c. 31, s. 12. *Rea v. Wood*, 4 C. & P. 381.

If a person, for the purpose of accomplishing a robbery, wounded by means of kicking the shins of the party whom he was endeavouring to rob, he was punishable under 9 Geo. 4, c. 31, s. 12, if the jury found that his intent was either to disable or do grievous bodily harm. *Rea v. Shadbolt*, 5 C. & P. 504.

Biting off the end of a person's nose, was not a wounding within 9 Geo. 4, c. 31, s. 12; nor was biting off a joint from a person's finger; as the statute was intended only to apply to wounding produced by some instrument, and not by the hands or teeth. *Rea v. Harris*, 7 C. & P. 446; *S. P., Jennings's case*, 2 Lewin, C. C. 130.

But a wound from a kick with a shoe was within 9 Geo. 4, c. 31, s. 12. *Rea v. Briggs*, 1 M. C. C. 318; 1 Lewin, C. C. 61.

The prisoner struck the prosecutor on the side of his hat with an air-gun, with great force, by which the prosecutor was wounded, but the wound was made by the violence with which the hat was struck, the weapon used by the prisoner never coming in contact with the head of the prosecutor:—Held, a wounding within 9 Geo. 4, c. 31, ss. 11 & 12. *Rea v. Sheard*, 7 C. & P. 846.

Maliciously throwing oil of vitriol over the prosecutor's face, with intent to disfigure, and so wounding his face, was not a wounding within 9 Geo. 4, c. 31, s. 12. *Rea v. Murrow*, 1 M. C. C. 456; *S. P., Henshall's case*, 2 Lewin, C. C. 135.

Inflicting a wound on a person by throwing a sledge-hammer at him, was a wounding within 9 Geo. 4, c. 31, ss. 11, 12, although the sledge-hammer, from being blunt, was not an instrument calculated to inflict a wound. *Rea v. Withers*, 4 C. & P. 446; 1 M. C. C. 294.

If a person struck another with a bludgeon, and broke the skin and drew blood, this was a sufficient wounding within 9 Geo. 4, c. 31, ss. 11, 12. *Rea v. Payne*, 4 C. & P. 558.

— **Indictment.**—On an indictment for wounding with intent, the actual intent must be proved. *Reg. v. Cox*, 1 F. & F. 664.

A party may be guilty of unlawfully wounding though there is no intent to wound, if the weapon used is calculated to wound, and known to be such. *Id.*

In an indictment for wounding with intent to murder, the instrument or means by which the wound was inflicted need not be stated, and, if stated, do not confine the prosecutor to prove a wound by such means. *Rea v. Briggs*, 1 M. C. C. 318; 1 Lewin, C. C. 61.

An indictment for cutting and wounding, which charged the offence to have been committed "feloniously, wilfully and maliciously," was bad, the words of 9 Geo. 4, c. 31, ss. 11 & 12, being "unlawfully and maliciously." *Rea v. Ryan*, 7 C. & P. 854; 2 M. C. C. 15.

Grievous Bodily Harm—What is.—A woman left her infant child, on a cold wet day, exposed in an open field, intending that it should die. It was found there after some hours, nearly dead from congestion of the lungs and heart, the effects of the exposure. By care, however, the child was restored in a few hours, and there then remained no bodily injury either to the lungs or heart, or otherwise:—Held, that a conviction under 7 Will. 4 & 1 Vict. c. 85, s. 2, for causing a bodily injury dangerous to life, could not be supported, as there was no lesion of any part of the organs of the child. *Reg. v. Gray*, Dears. & B. C. C. 903; 7 Cox, C. C. 326; 26 L. J., M. C. 203; 3 Jur., N. S. 989.

To constitute grievous bodily harm it is not necessary that the injury should be either permanent or dangerous; if it is such as seriously to interfere with comfort or health, it is sufficient. *Reg. v. Ashman*, 1 F. & F. 88.

Where a party strikes at A., and B., interposing, receives the blow, he cannot be convicted of wounding with intent to do grievous bodily harm to B. The use of a deadly weapon is not justifiable in repelling a common assault; there must be the apprehension of serious bodily danger or of robbery, or some similar offence of violence. *Reg. v. Hewlett*, 1 F. & F. 91.

The prisoner was the first, or almost the first, to leave the gallery of a theatre at the close of the performance; he ran down the stairs, wilfully put out the gas, and placed an iron bar across the doorway. This caused a panic among the persons when leaving the gallery, and several of them were seriously injured through the pressure of the crowd:—Held, that the prisoner was properly convicted of unlawfully and maliciously doing and inflicting grievous bodily harm within the meaning of 24 & 25 Vict. c. 100, s. 20. *Reg. v. Martin*, 8 Q. B. D. 54; 51 L. J., M. C. 36; 45 L. T. 444; 30 W. R. 106; 46 J. P. 228; 14 Cox, C. C. 633.

— **Aiming at another Person.**—A. was indicted for feloniously shooting at the prosecutor, with intent to do grievous bodily harm to him. The jury found that he did not aim at the prosecutor, or at any one else in particular, but that he fired into a group of persons, intending generally to do grievous bodily harm, and so unlawfully wounded:—Held, that he was guilty of the felony charged, and not merely of the misdemeanor of unlawfully wounding. *Reg. v. Fretwell*, L. & C. 443; 9 Cox, C. C. 471; 33 L. J., M. C. 128; 10 Jur., N. S. 595; 10 L. T. 428; 12 W. R. 751.

Intent to Resist Apprehension.—On an indictment for cutting and maiming with intent to do grievous bodily harm, a prisoner may be convicted whose main and principal intent was

to prevent his lawful apprehension, or, in order to effect the latter intent, he also intended to murder, or do grievous bodily harm. *Rea v. Gillow*, 1 M. C. C. 85; 1 Lewin, C. C. 57. See *Rea v. Thompson*, 1 M. C. C. 80; *Rea v. Davis*, 1 C. & P. 306.

— **Notice of Purpose.**—The offence of maliciously cutting, with intent to resist lawful apprehension, is not committed where the party has no notice of the purpose of the officers. *Rea v. Rieketts*, 3 Camp. 68.

— **By Prosecutor.**—A. asked permission to take some ashes from B.'s house: as A. was going away B. saw that A. had a kettle in the basket and laid hold of him; in the scuffle A. and B. fell, and A. cut B. with a knife:—Held, a question for the jury whether A. stole the kettle, for in that case B. had a right to apprehend him. *Reg. v. Priece*, 8 C. & P. 282.

It appeared that the prisoner was seen in the night entering an outhouse with intent to commit a felony by a person who told the prosecutor. The prosecutor went in search of the prisoner and found him in a neighbouring garden and apprehended him. On objection raised that the prosecutor had no right to apprehend the prisoner, held that the conviction was good. *Rea v. Howorth*, Car. Supp. 231; 1 M. C. C. 207.

— **Apprehension by Prosecutor under Magistrates' Direction.**—A prisoner was indicted for cutting and maiming with intent to prevent his apprehension for an offence for which he was liable to be apprehended, to wit, for that he did violently assault and beat A. He was taken before the magistrates by the prosecutor, on a warrant directed to him for an assault on A., and ordered to find bail, which he refused to do, and whilst the commitment was being made out escaped. The prosecutor, by verbal directions of the magistrates, pursued the prisoner, and, in attempting to apprehend him, he was cut by him:—Held, well convicted, and that the offence was rightly described. *Rea v. Williams*, 1 M. C. C. 387.

— **By Gamekeeper on Highway.**—A gamekeeper, accompanied by his assistant, met four poachers on the highway, one carrying a gun, another a gun barrel, and the other two bludgeons. There had been previously two shots fired. The gamekeeper said to his assistant, "Mind the gun," and the assistant laid hold of it, and then the gamekeeper called to another person; upon this three of the poachers knocked him down and stunned him, and when he came to himself he saw all of them near, and one said as they passed him, "D—n them, we have done them both," and one turned back and cut him on the left leg, and all then ran away. It was objected, first, that the wounding of the leg was the act of one alone, and there was no evidence to shew which of them it was; secondly, that, from the expressions used, it was evident that both were thought to be dead, and there could be no intent to murder; and thirdly, that the prisoners being on the highway, the gamekeeper and his assistant had no right to interfere with them. The prisoners were convicted, and the judges held the conviction right. *Rea v. Warner*, 5 C. & P. 525; 1 M. C. C. 380.

— **Legality of Apprehension by Constable—No Warrant.**—A constable who had verbal directions from the magistrates to apprehend all persons playing at thimblery, attempted to apprehend the prisoner and his companions playing at thimblery in a public fair. The constable, with assistance, took one of the party; but the prisoner and the rest rescued him and got off. In the evening of the same day the constable found the prisoner in a public-house, not having been able to find him before, and endeavoured to apprehend him, stating it was for what he had been doing at the fair. He escaped into a privy, and the constable called the prosecutor to his assistance, and together they broke open the privy-door, and endeavoured to take him, who thereupon stabbed the prosecutor. A conviction for feloniously cutting and maiming was held wrong. *Rea v. Gardener*, 1 M. C. C. 390.

A police-officer, having been assaulted by W., attempted, two hours afterwards, to take him into custody. W. resisted and wounded the officer:—Held, that the apprehension would not have been lawful, and that W. could not be convicted of wounding with intent to prevent his lawful apprehension. *Reg. v. Walker*, 2 C. L. R. 485; *Dears*, C. C. 358; 6 Cox, C. C. 371; 23 L. J., M. C. 123.

A., a constable employed to watch a copse, seeing B. wrongfully carry away wood therefrom, calls to him to stop, and on B.'s running away fires at and wounds him. B. had been frequently convicted summarily of the like offence, and by 7 & 8 Geo. 4, c. 29, s. 39, such stealing after two summary convictions is a felony. The fact of these convictions, as well as of their legal consequences, was wholly unknown to A.:—Held, that A. was rightly convicted of wounding with intent to do grievous bodily harm. *Reg. v. Dadson*, 2 Den. C. C. 35; 3 C. & K. 148; T. & M. 385; 4 Cox, C. C. 358; 20 L. J., M. C. 57; 14 Jur. 1051.

— **Indictment.**—An indictment under 43 Geo. 3, c. 58, for cutting and maiming with intent to murder and disable, was not supported by evidence of a cutting with intent to produce a temporary disability in a person lawfully apprehending the prisoner until he could effect his own escape. *Rea v. Boyce*, 1 M. C. C. 29.

In an indictment on 43 Geo. 3, c. 58, the intent laid in several counts was to murder, to disable, or to do some grievous bodily harm; the intent found by the jury was to prevent being apprehended:—Held, that the conviction was bad, for that, if the intent was to prevent the lawful apprehension of the prisoner, it should be laid so. *Rea v. Duffin*, R. & R. C. C. 365; 1 East, P. C. 437.

A conviction on an indictment for maliciously cutting a police officer, with intent to resist and prevent the arrest and detainer of a prisoner for a certain offence, for which he was liable by law to be apprehended and detained, viz., for committing damage and injury upon certain plants and roots in a garden, is good. *Rea v. Fraser*, 1 M. C. C. 419.

— **Evidence.**—On an indictment for stabbing, with intent to resist lawful apprehension, it must be shewn that the officer was either present or came armed with a warrant. *Rea v. Dyson*, 1 Stark. 246.

2. ADMINISTERING CHLOROFORM TO COMMIT INDICTABLE OFFENCE.

Statute.]—By 24 & 25 Vict. c. 100, s. 22, *whoever shall unlawfully apply or administer to, or cause to be taken by, or attempt to apply or administer to, or attempt to cause to be administered to or taken by, any person, any chloroform, laudanum or other stupefying or overpowering drug, matter or thing, with intent in any of such cases thereby to enable himself or any other person to commit, or with intent in any of such cases thereby to assist any other person in committing, any indictable offence, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any other term not less than five years (27 & 28 Vict. c. 47) or to be imprisoned for any term not exceeding two years, with or without hard labour. (Former provision, 14 & 15 Vict. c. 19, s. 3.)*

3. ADMINISTERING POISON WITH INTENT TO ENDANGER LIFE, AGGRIEVE OR ANNOY.

Statute.]—By 24 & 25 Vict. c. 100, s. 23, *whoever shall unlawfully and maliciously administer to, or cause to be administered to or taken by, any other person, any poison or other destructive or noxious thing, so as thereby to endanger the life of such person, or so as thereby to inflict upon such person any grievous bodily harm, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding ten years, and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour. (Similar to former provision, 23 Vict. c. 8, s. 1.)*

With Intent to Injure, Aggrieve or Annoy.]

By s. 24, *whoever shall unlawfully and maliciously administer to, or cause to be administered to or taken by, any other person, any poison or other destructive or noxious thing, with intent to injure, aggrieve or annoy such person, shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for the term of five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour. (Similar to 23 Vict. c. 8, s. 2.)*

By s. 25, *if, upon the trial of any person for any felony in the last but one preceding section mentioned, the jury shall not be satisfied that such person is guilty thereof, but shall be satisfied that he is guilty of any misdemeanor in the last preceding section mentioned, then and in every such case the jury may acquit the accused of such felony, and find him guilty of such misdemeanor, and thereupon he shall be liable to be punished in the same manner as if convicted upon an indictment for such misdemeanor. (Similar to 23 Vict. c. 8, s. 3.)*

— **What is.]**—Administering cantharides to a woman, with intent to excite her sexual passion, in order to obtain connexion with her, was an administering with intent to injure, aggrieve or annoy, within 23 Vict. c. 8, s. 2. *Reg. v. Wilkins, L. & C. 89; 9 Cox, C. C. 20; 31 L. J.,*

M. C. 72; 7 Jur., N. S. 1128; 5 L. T. 330; 10 W. R. 62.

But administering cantharides to a woman, with intent to injure her health, was not a misdemeanor at common law, neither was it an assault, nor within 7 Will. 4 & 1 Vict. c. 85, *Reg. v. Hanson, 4 Cox, C. C. 138; 2 C. & K. 912.*

What are Noxious Things.]—A man was indicted for wilfully and maliciously administering to Mary Rowe, a poison, to wit, a certain destructive and noxious thing, to wit, cantharides, with intent to injure, annoy and aggrieve. To constitute this offence, the thing administered must be noxious in itself, and not merely when taken in excess, and that although it may have been administered with intent to injure or annoy. *Reg. v. Hennah, 13 Cox, C. C. 547.*

Poison to Annoy—Inflicting Bodily Harm.]

Under 24 & 25 Vict. c. 100, ss. 23, 24, if a noxious thing is unlawfully administered with intent only to injure or annoy, and does, in fact, inflict grievous bodily harm, a felony is committed. *Tulley v. Corrie, 10 Cox, C. C. 640; 17 L. T. 140; S. C., 10 Cox, C. C. 584, at nisi prius.*

4. INJURING PERSONS BY EXPLOSIVE OR CORROSIVE SUBSTANCES.

Statute.]—By 24 & 25 Vict. c. 100, s. 28, *whoever shall unlawfully and maliciously, by the explosion of gunpowder or other explosive substance, burn, maim, disfigure, disable, or do any grievous bodily harm to any person, shall be guilty of felony, and, being convicted thereof, shall be liable at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping. (Former provision, 9 & 10 Vict. c. 25, s. 3.)*

By s. 29, *whoever shall unlawfully and maliciously cause any gunpowder or other explosive substance to explode, or send or deliver to or cause to be taken or received by any person any explosive substance or any other dangerous or noxious thing, or put or lay at any place, or cast or throw at or upon or otherwise apply to any person, any corrosive fluid or any destructive or explosive substance, with intent in any of the cases aforesaid to burn, maim, disfigure, or disable any person, or to do some grievous bodily harm to any person, shall, whether any bodily injury be effected or not, be guilty of felony. (Punishment the same as in the last section. Former provisions, 9 & 10 Vict. c. 25, s. 1; 7 Will. 4 & 1 Vict. c. 85, s. 5.)*

By s. 30, *whoever shall unlawfully and maliciously place or throw in, into, upon, against, or near any building, ship, or vessel, any gunpowder or other explosive substance, with intent to do any bodily injury to any person, shall, whether or not any explosion take place, and whether or not any bodily injury be effected, be guilty of felony, and, being convicted thereof, shall be liable at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years, and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned*

for any term not exceeding two years with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping. (Former provision, 9 & 10 Vict. c. 25, s. 6.)

Boiling Water.]—Boiling water was a dangerous thing within 7 Will. 4 & 1 Vict. c. 85. *Reg. v. Crawford*, 2 C. & K. 129.

A woman pouring boiling water over the face and into the ear of her husband while he was asleep, whereby he was temporarily blind, and permanently deaf on one side:—Held, that she might be convicted of felony under 7 Will. 4 & 1 Vict. c. 85, s. 5. *Id.*

5. BY SPRING GUNS.

Statute.]—By 24 & 25 Vict. c. 100, s. 31, *whoever shall set or place, or cause to be set or placed, any spring gun, man trap, or other engine calculated to destroy human life, or inflict grievous bodily harm, with the intent that the same or whereby the same may destroy or inflict grievous bodily harm upon a trespasser or other person coming in contact therewith, shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for the term of five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour:*

And whosoever shall knowingly and wilfully permit any such spring gun, man trap, or other engine, which may have been set or placed in any place then being in, or afterwards coming into, his possession or occupation, by some other person, to continue so set or placed, shall be deemed to have set and placed such gun, trap, or engine with such intent as aforesaid:

Provided that nothing in this section contained shall extend to make it illegal to set or place any gin or trap, such as may have been or may be usually set or placed with the intent of destroying vermin:

Provided also, that nothing in this section shall be deemed to make it unlawful to set or place, or cause to be set or placed, or to be continued set or placed, from sunset to sunrise, any spring gun, man trap, or other engine which shall be set or placed, or caused or continued to be set or placed, in a dwelling-house for the protection thereof. (Former provision, 7 & 8 Geo. 4, c. 18, ss. 1, 2, 3, 4.)

Before this Enactment.]—The plaintiff entered the defendant's garden at night, and without his permission, to search for a stray fowl, and, whilst looking closely into some bushes, he came in contact with a wire, which caused something to explode with a loud noise, knocking him down and slightly injuring his face and eyes:—Held, in an action, that the defendant was not liable for this injury at common law, or, in the absence of evidence that it was caused by a spring gun or other engine calculated to inflict grievous bodily harm, under 7 & 8 Geo. 4, c. 18, s. 1. *Wootton v. Dawkins*, 2 C. B., N. S. 412.

6. INJURING PERSONS BY WANTON OR FURIOUS DRIVING.

By 24 & 25 Vict. c. 100, s. 35, whosoever having the charge of any carriage or vehicle, shall, by

wanton or furious driving or racing, or other wilful misconduct, or by wilful neglect, do or cause to be done any bodily harm to any person whatsoever, shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour. (Former provision, 1 Geo. 4, c. 4.)

7. ILLTREATMENT OF HELPLESS PERSONS.

Statute.]—By 24 & 25 Vict. c. 100, s. 26, *whosoever, being legally liable, either as a master or mistress, to provide for any apprentice or servant necessary food, clothing, or lodging, shall wilfully and without lawful excuse refuse or neglect to provide the same, or shall unlawfully and maliciously do or cause to be done any bodily harm to any such apprentice or servant, so that the life of such apprentice or servant shall be endangered, or the health of such apprentice or servant shall have been, or shall be likely to be, permanently injured, shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for the term of five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour. (Former provision, 14 & 15 Vict. c. 11, s. 1.)*

Of Children at Common Law.]—If a woman, in breach of her maternal duty, wilfully abandons her child of too tender years to provide for itself, she is not indictable at common law, unless her abandonment causes an injury to the health of the child. *Reg. v. Phillpott*, Dears. C. C. 179; 6 Cox, C. C. 140; 22 L. J., M. C. 113; 17 Jur. 399.

Evidence "that the child had suffered injury, but not to any serious extent," does not sufficiently support an averment in the indictment that the health of the child had been greatly and materially injured. *Id.*

In an indictment against a parent for neglecting to provide sufficient food and clothing for a child of tender years, for whom he is bound by law to provide, it is not necessary to aver that the parent was, at the time of the alleged offence, of sufficient ability to perform the duty so imposed upon him. *Reg. v. Ryland*, 1 L. R., C. C. 99; 37 L. J., M. C. 10; 17 L. T. 219; 16 W. R. 280; 10 Cox, C. C. 569.

Master not bound to Provide Medical Advice.]

—A master is not by law bound to provide medical advice for his servant; but with respect to an apprentice, a master is bound, during the illness of his apprentice, to provide him with proper medicines. *Reg. v. Smith*, 8 C. & P. 153.

Master not supplying Food.]—A girl of sixteen is not an infant of tender years, and therefore her master and mistress, who have not kept her under duress, are not guilty of a misdemeanor in not supplying her with sufficient food and nourishment, whilst in their service. *Anon.*, 5 Cox, C. C. 279.

An indictment lies against a master for not providing sufficient food and sustenance for a servant, whereby she became sick and emaciated. *Rev v. Ridley*, 2 Camp. 650.

— **Idiots.**]—If one has his idiot brother, who is helpless, as an inmate in his house, and omits to supply him with proper food, warmth, &c., he is not indictable for the omission. *Rea v. Smith*, 2 C. & P. 449.

— **Prisoners of War.**]—It is an indictable offence wilfully and maliciously to supply prisoners of war with unwholesome food not fit to be eaten by man. *Rea v. Treece*, 2 East, P. C. 821.

Of Lunatics.]—By 16 & 17 Vict. c. 96, s. 9, if any superintendent, officer, nurse, attendant, servant, or other person employed in any registered hospital or licensed house, or any person having the care or charge of any single patient, or any attendant of any single patient, in any way abuse, or ill-treat, or wilfully neglect any patient in such hospital or house, or such single patient, or if any person detaining, or taking or having the care or charge, or concerned or taking part in the custody, care, or treatment of any lunatic or person alleged to be a lunatic, in any way abuse, ill-treat, or wilfully neglect such lunatic or alleged lunatic, he shall be guilty of a misdemeanor, and shall be subject to indictment for every such offence, or to forfeit for every such offence, on a summary conviction thereof before two justices, any sum not exceeding 20*l*.

— **By Person in Charge of—Who is.**]—A. was convicted on an indictment under 16 & 17 Vict. c. 96, s. 9, which charged that he, having the care and charge of his wife, a lunatic, did abuse and ill-treat her:—Held, that he was not a person having the care or charge of a lunatic within the meaning of the statute, inasmuch as its provisions were not intended to apply to persons whose care or charge arises from natural duty. *Reg. v. Rundle*, Dears. C. C. 482; 6 Cox, C. C. 549; 3 C. L. R. 659; 24 L. J., M. C. 129; 1 Jur., N. S. 430.

But a man who has voluntarily taken upon himself the care of a lunatic brother in his own private house is a person having the care and charge of a lunatic within 16 & 17 Vict. c. 96, s. 9, and is liable to be indicted for ill-treating him. *Reg. v. Porter*, L. & C. 394; 9 Cox, C. C. 449; 33 L. J., M. C. 126; 10 Jur., N. S. 547; 10 L. T. 306; 12 W. R. 718.

The two prisoners, brothers of the lunatic, took a house, and their mother and lunatic sister lived with them. They supported the household, but did not receive any payment for or on account of any special charge of their lunatic sister. The ill-treatment of the lunatic was conclusively proved:—Held, that the two prisoners were persons having the care or charge, or concerned or taking part in the custody, care, or treatment of a lunatic within s. 9 of the 16 & 17 Vict. c. 96. *Reg. v. Smith*, 14 Cox, C. C. 398; 42 L. T. 160; 44 J. P. 314.

Duty of Overseers.]—It is an indictable offence in an overseer to neglect to supply medical assistance, when required, to a pauper labouring under dangerous illness, although he was not in the workhouse, nor had, previously to his illness, received or stood in need of parochial relief. *Rea v. Warren*, R. & R. C. C. 48, n. And see *Hays v. Bryant*, 1 H. Bl. 253; *Rea v. Saunders*, 7 C. & P. 277.

But an overseer is not indictable for not relieving a pauper, unless there is an order for his relief; except in case of immediate emergency, where there is not time to get an order. *Rea v. Meredith*, R. & R. C. C. 46. But see *contra*, *Rea v. Booth*, R. & R. C. C. 47, n.; and 4 & 5 Will. 4, c. 76, ss. 52, 54.

Indictment.]—An indictment charging a feme covert, living separately and apart from her husband, with neglecting and refusing to provide necessary meat and drink for her servant, and keeping her without sufficient warmth, whereby she became sick and emaciated, is insufficient, in not alleging that the servant was of tender years, and under the dominion and control of the defendant. *Rea v. Ridley*, 2 Camp. 650.

So an indictment against a master for not providing necessaries for his apprentice, ought to state that the apprentice was of tender years, and unable to provide for himself. *Rea v. Friend*, R. & R. C. C. 20.

A count charged that a lunatic was the illegitimate child of the defendant, a female, who had means for the comfortable support and maintenance of both, whereupon it became her duty to take proper care of him, but that she did not take proper care of him, but kept and confined him in a dark, cold and unwholesome room; neglected to provide him with proper clothing; permitted him to become dirty; allowed the room to become foul, so as to cause unwholesome smells; and kept him without proper air, warmth and exercise necessary for his health, to his damage and peril. Judgment arrested, first, because no duty was shewn; and secondly, because it was not shewn that the conduct of the defendant had or must have occasioned actual injury. *Reg. v. Pelham*, 8 Q. B. 959; 15 L. J., M. C. 105; 10 Jur. 659.

Abandonment and Exposure of Children.]—By 24 & 25 Vict. c. 100, s. 27, whosoever shall unlawfully abandon or expose any child, being under the age of two years, whereby the life of such child shall be endangered, or the health of such child shall have been or shall be likely to be permanently injured, shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for the term of five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour.

When Indictable.]—It is an indictable offence to expose a person to the inclemency of the weather. *Rea v. Ridley*, 2 Camp. 650, 653.

What is.]—A. and B. were indicted for that they “did abandon and expose a child then being under the age of two years, whereby the life of the child was endangered.” A., the mother of a child five weeks old, and B., put the child into a hamper, wrapped up in a shawl and packed with shavings and cotton wool; and A., with the connivance of B., took the hamper to M., about four or five miles off, to the booking office of the railway station there. She there paid for the carriage of the hamper, and told the clerk to be very careful of it, and to send it to G. by the next train, which would leave M. in ten minutes from that time. She said nothing as to the

contents of the hamper, which was addressed, "Mr. Carr's, Northoutgate, Gisbro', with care, to be delivered immediately," at which address the father of the child was then living. The hamper was carried by the ordinary passenger train from M. to G., leaving M. at 7.45 P.M., and arriving at G. at 8.15 P.M. At 8.40 P.M. the hamper was delivered at its address. The child died, three weeks afterwards, from causes not attributable to the conduct of the prisoners. On proof of these facts, it was objected for the prisoners that there was no evidence that the life of the child was endangered, and that there was no abandonment and no exposure of the child within the meaning of the 24 & 25 Vict. c. 100, s. 27. The objections were overruled, and the prisoners found guilty:—Held, that the conviction should be affirmed. *Reg. v. Fulkingham*, 1 L. R., C. C. 222; 39 L. J., M. C. 47; 21 L. T. 679; 18 W. R. 355.

A woman, who was living apart from her husband, and who had the actual custody of their child under two years of age, brought the child, in the month of October, and left it at the father's door, telling him she had done so. He knowingly allowed it to remain lying outside his door, and subsequently in the roadway, from about 7 P.M. to 1 A.M., when it was removed by a constable, the child then being cold and stiff:—Held, that though the father had not had the actual custody and possession of the child, yet, as he was by law bound to provide for it, his allowing it to remain where he did was an abandonment and exposure of the child by him, whereby its life was endangered, within 24 & 25 Vict. c. 100, s. 27. *Reg. v. White*, 1 L. R., C. C. 311; 40 L. J., M. C. 134; 24 L. T. 637; 19 W. R. 783; 12 Cox, C. C. 83.

Indictment.—Indictment charging A. with unlawfully leaving a child of a month old, of which she had the care, in a highway in a parish with intent to burden the parish with the maintenance of the child, is bad, for not negating the settlement of the child in the parish, and for not alleging any injury done to the child by the act of A. *Reg. v. Cooper*, 1 Den. C. C. 459; 2 C. & K. 876; T. & M. 125; 3 Cox, C. C. 559; 18 L. J., M. C. 168; 13 Jur. 502.

An indictment charging that a woman deserted her bastard child with intent to throw the burden of its maintenance on the parish, is bad, without an averment that the child had sustained any injury by the abandonment, or that the woman had the means of supporting the child. *Reg. v. Hogan*, 2 Den. C. C. 277; T. & M. 610; 5 Cox, C. C. 255; 20 L. J., M. C. 219; 15 Jur. 805.

An indictment charging a party with abandoning a child with the intent to burden a particular parish with its maintenance, is not supported by proof that the child was deposited by the accused in a parish in a secret place where it was not likely to be found. *Reg. v. Renshaw*, 2 Cox, C. C. 385; 11 Jur. 615.

8. FALSE IMPRISONMENT.

What is—Confining Captain of Ship.—In an indictment for confining a captain of a ship, constructive confinement will satisfy the requirements of the statute, and this will be supported by evidence that, although no force was used, the captain was restrained by the presence and gestures of the prisoners, and deprived of his

lawful command, and compelled to remain in certain parts of the vessel. *Reg. v. Jones*, 11 Cox, C. C. 393.

—On board Ship.—The defendant was convicted on an indictment charging him with assaulting the prosecutors on the high seas, and imprisoning and detaining them. They were Chilean subjects and had been ordered by the government of Chili to be banished from that country to England. The defendant being master of an English merchant vessel lying in the territorial waters of Chili, contracted with the Chilean government to take the prosecutors from Chili to Liverpool; they were accordingly brought on board his vessel by the officers of the government and carried by the defendant to Liverpool under his contract:—Held, that though the conviction could not be supported for the assault and imprisonment in the Chilean waters, it must be sustained for that which was done out of the Chilean territory, and that although the defendant was justified in receiving the prosecutors on board his vessel in Chili, yet that justification ceased when he passed the line of Chilean jurisdiction, and that the detention amounted to a false imprisonment and was triable by English law. *Reg. v. Lesley*, Bell, C. C. 220; 8 Cox, C. C. 269; 29 L. J., M. C. 97; 6 Jur., N. S. 202; 1 L. T. 452; 8 W. R. 220.

—Of Lunatic.—See *Reg. v. Smith*, *post*, col. 497.

9. ASSAULT.

a. Common Assaults.

What is.—To support a charge of assault, such an assault must be shewn as could not be justified, if an action was brought for it, and leave and licence pleaded. *Reg. v. Meredith*, 8 C. & P. 589.

—Presenting Pistol.—If a person presents a pistol, purporting to be a loaded pistol, at another, and so near as to have been dangerous to life if the pistol had gone off; semble, that this is an assault, even though the pistol was, in fact, not loaded. *Reg. v. St. George*, 9 C. & P. 483. But see *Blake v. Barnard*, 9 C. & P. 626.

It is an assault to point a loaded pistol at any one; but not an assault to point a pistol at another which is proved not to be so loaded as to be able to be discharged. *Reg. v. James*, 1 C. & K. 530.

—Threatening Attitude.—A. was advancing in a threatening attitude, with an intention to strike B., so that his blow would have almost immediately reached B., if he had not been stopped:—Held, that it was an assault in point of law, though, at the particular moment when A. was stopped, he was not near enough for his blow to take effect. *Stephens v. Myers*, 4 C. & P. 349.

—Self-defence.—If one man strikes another a blow, that other has a right to defend himself, and strike a blow in his defence, but he has no right to avenge himself; and if, when all the danger is past, he strikes a blow not necessary, he commits an assault and a battery. *Reg. v. Driscoll*, Car. & M. 214.

A party struck at may strike again, to prevent a repetition. *Anon.*, 2 Lewin, C. C. 48.

— **Persons Present at a Prize-fight.**—A prize-fight is illegal, and all persons aiding and abetting therein are guilty of assault, and the consent of the persons actually engaged in fighting to the interchange of blows does not afford any answer to the criminal charge of assault. *Reg. v. Coney*, 8 Q. B. D. 534; 51 L. J., M. C. 66; 46 L. T. 307; 30 W. R. 678; 46 J. P. 404; 15 Cox, C. C. 46.

— **Persons Striking one another.**—If two go out to strike one another, and do so, it is an assault in both, and it is quite immaterial who strikes the first blow. *Reg. v. Lewis*, 1 C. & K. 419.

— **Effect of Consent.**—A man induced two youths above fourteen years to go out with him in the evening to an out-of-the-way place, where they mutually indulged in indecent practices on each other's persons. The youths were willing and assenting to what was done:—Held, that a conviction for an indecent assault could not be upheld. *Reg. v. Wollaston*, 12 Cox, C. C. 180; 26 L. T. 403. See now 43 & 44 Vict. c. 45, s. 2.

An assault must, in the absence of fear or fraud to procure consent, be an act done contrary to the consent of the patient, but mere submission by the patient, in ignorance of the moral nature of the act, to an act of indecency done by the agent does not amount to such consent; therefore, where two boys of eight years of age submitted to indecent acts on the part of a grown-up man in ignorance of the nature of the acts to be done and done, the man was held to be rightly convicted of an indecent assault. *Reg. v. Lock*, 2 L. R., C. C. 10; 42 L. J., M. C. 5; 27 L. T. 661; 21 W. R. 144.

Mere submission to an indecent act, without any positive exercise of a dissenting will, where, owing to circumstances, the person submitting is in ignorance of the nature of the act, is not such a consent as the law contemplates, so as to prevent the act from being an assault. *Id.*

— **Improper Connexion with Female.**—Three boys under fourteen had connexion with a girl, aged nine; they were indicted for an assault; the jury found them guilty, the child being an assenting party, but that from her tender years she did not know what she was about:—Held, that this was not an assault, and that the conviction was wrong. *Reg. v. Read*, 2 C. & K. 957; 1 Den. C. C. 377; T. & M. 52; 3 New Sess. Cas. 405; 19 L. J., M. C. 88; 13 Jur. 68. See now 43 & 44 Vict. c. 45, s. 2.

Attempting to carnally know and abuse a girl between the ages of ten and twelve is not an assault, if the girl consents to all that is done, but is a misdemeanor. *Reg. v. Martin*, 9 C. & P. 213; 2 M. C. C. 123; S. P., *Reg. v. Johnson*, 10 Cox, C. C. 114; L. & C. 632. But see now 43 & 44 Vict. c. 45, s. 2.

The person making such attempt, with the consent of the girl, is not indictable for an assault, but is indictable for the misdemeanor of attempting to commit the misdemeanor of carnally knowing and abusing her. *Id.*; S. P., *Reg. v. Neale*, 35 L. J., M. C. 60.

If the prisoner obtains possession of a woman by surprise and in attempting to have connexion, penetrates her person a little, it is an assault. *Reg. v. Stanton*, 1 C. & K. 415.

If the jury in a case of rape think that the

prosecutrix was first laid hold of against her will, but afterwards did not resist, because she in some degree consented to what was afterwards done to her, they ought to acquit of the felony but convict of the assault. *Reg. v. Hallett*, 9 C. & P. 748.

If a man has connexion with a woman, she consenting under the belief that it is her husband, this is an assault. *Reg. v. Williams*, 8 C. & P. 286.

Where a prisoner is charged with unlawfully making an assault on a girl between the ages of ten and twelve years of age and unlawfully and carnally knowing and abusing her against the form of the statute, he may be found guilty of a common assault. *Reg. v. Guthrie*, 1 L. R., C. C. 241; 39 L. J., M. C. 95; 22 L. T. 485; 18 W. R. 792.

On an indictment for carnally knowing and abusing a girl under ten, the prisoner may be acquitted of the felony and convicted of an assault. *Reg. v. Folkes*, 2 M. & Rob. 460.

Where a medical practitioner had sexual connexion with a female patient of the age of fourteen, who had for some time been receiving medical treatment from him:—Held, that he was guilty of an assault, the jury having found that she was ignorant of the nature of his act, and made no resistance, solely from a bona fide belief that he was (as he represented) treating her medically, with a view to her cure. *Reg. v. Case*, T. & M. 318; 1 Den. C. C. 580; 4 Cox, C. C. 220; 4 New Sess. Cas. 347; 19 L. J., M. C. 174; 14 Jur. 489.

— **Abandonment of Child.**—A female abandoned her infant child, having first deposited it in the bottom of a dry ditch among some nettles, by which it was not hurt; and had not suffered any harm from the exposure, as it had been found shortly afterwards:—Held, that she could not be convicted of a common assault. *Reg. v. Renshaw*, 2 Cox, C. C. 385; 11 Jur. 615.

— **Child Placed on Railings.**—C. was delivered of a child at the house at which A. and B. resided, they telling her that the child was to be taken to an institution to be nursed. A. and B. took the child, and put it into a bag, and hung it on some park-palings at the side of a foot-path, and there left it:—Held, that this was an assault on the child. *Reg. v. Mareh*, 1 C. & K. 496.

— **Chastisement in Indecent Manner.**—Where a master of a union inflicts personal chastisement on a female pauper in an indecent manner, he is guilty of an assault, even though the extent of the correction is within the limits of moderation. *Reg. v. Miles*, 6 Jur. 243.

— **Stripping Female for Medical Examination.**—Making a female patient strip naked, under the pretence that the defendant, a medical man, cannot otherwise judge of her illness, is, if he himself takes off her clothes, an assault. *Reg. v. Rosinski*, 1 M. C. C. 198.

— **Indecent Liberties.**—If a schoolmaster takes indecent liberties with a female scholar, without her consent, though she does not resist, he is liable to be punished as for a common assault. *Reg. v. Nichol*, R. & R. C. C. 130.

— **Cutting off Pauper's Hair.**—If parish officers cut off the hair of a pauper in the poor-house by force, and against the will of such pauper, this is an assault; and if it be done as matter of degradation, and not with a view to cleanliness, that will be an aggravation, and go to increase the damages. *Forde v. Skinner*, 4 C. & P. 439.

— **Keeping Idiot without Necessaries.**—If one has an idiot brother who is bed-ridden in his house, and keeps him in a dark room without sufficient warmth or clothing, this will not be an assault or an imprisonment, nor will proof of this support an indictment for an assault or an imprisonment. *Rea v. Smith*, 2 C. & P. 449.

— **Threatening Language or Behaviour with Intent to Provoke a Breach of the Peace.**—Where a tract distributor followed two Roman Catholic clergymen in the public street, and handed them a bill, inviting them to a discussion on religious matters, and persisted in holding up the bill after he had been informed they were Roman Catholic priests:—It was held that such conduct was making use of threatening, abusive or insulting language or behaviour, which might provoke a breach of the peace. And a magistrate having convicted the tract distributor for such conduct on a charge of assault, the court refused a certiorari to bring up the conviction for the purpose of quashing it. *Reg. v. King*, 14 Cox, C. C. 434.

— **Assault in Legislative Assembly.**—An information by the attorney-general of New South Wales charged, "That on the 26th of February, 1868, at Sydney, in the colony, while the legislative assembly of the colony was sitting, a member of the assembly, whose conduct had been, and was then, under its consideration, after having been heard in his place in the assembly in reference to such conduct, was, in accordance with the practice of the assembly, requested by the speaker to withdraw therefrom, and that the member, in obedience to the request, thereupon withdrew from the assembly, and that immediately on his so withdrawing, the defendant being a member of the assembly, in and upon the member did make an assault, and him (the member) did then beat, wound and ill-treat, in contempt of the assembly, in violation of its dignity, and to the great obstruction of its business:—Held, that the information charged in proper terms a common assault. That the words, "in contempt of, etc.," did not constitute a separate charge, or derogate from the charge of assault. *Reg. v. Macpherson*, 3 L. R., P. C. 268; 39 L. J., P. C. 59; 23 L. T. 101; 18 W. R. 1053.

— **Putting Noxious Thing into Drink.**—A. put cantharides into rum, and gave it to B. to drink; B. drank it, not knowing that the cantharides was in the rum, and became ill:—Held, that A. was neither indictable for an assault, nor for a misdemeanor at common law. *Reg. v. Hanson*, 2 C. & K. 912; 4 Cox, C. C. 138; *S. P.*, *Reg. v. Walkden*, 1 Cox, C. C. 282; *Reg. v. Dilworth*, 2 M. & Rob. 531.

— **When Assault Justified.**—If a party is turning towards the wall in the street, at night, for a particular occasion, a watchman is not

justified in collaring him to prevent him so doing. *Booth v. Hanley*, 2 C. & P. 288. *See* 2 & 3 Vict. c. 47.

A person may, under particular circumstances, justify laying hands on another in order to serve him with process. *Harrison v. Hodgson*, 10 B. & C. 445; 5 M. & R. 392.

A police-constable is not justified under 10 Geo. 4, c. 44, s. 7, in laying hold of, pushing along the highway, and ordering to be off, a person found by him conversing in a crowd with another, merely because the person with whom he happens to be conversing is known to be a reputed thief. *Stocken v. Carter*, 4 C. & P. 477. *See* 2 & 3 Vict. c. 47.

— **To Prevent Broker Re-entering.**—A broker and his man having levied a distress for rent, the man in possession was ejected. The owner of the goods was not in the room at the time of the levy, and it was not proved that he was a party to turning the man out, or that he knew of the distress being levied; but on the broker and his assistants breaking open the outer door to re-enter, the prisoner struck one of the assistants with an axe on the forehead:—Held, that the prisoner must at least be found guilty of an assault. *Reg. v. Sullivan*, Car. & M. 209.

b. On Clergymen or Ministers of Religion.

Statute.—By 24 & 25 Vict. c. 100, s. 36, *whosoever shall, by threats or force, obstruct or prevent, or endeavour to obstruct or prevent, any clergyman or other minister in or from celebrating divine service, or otherwise officiating in any church, chapel, meeting-house or other place of divine worship, or in or from the performance of his duty in the lawful burial of the dead in any churchyard or other burial-place, or shall strike or offer any violence to, or shall, upon any civil process, or under the pretence of executing any civil process, arrest any clergyman or other minister who is engaged in, or to the knowledge of the offender is about to engage in, any of the rites or duties in this section aforesaid, or who to the knowledge of the offender shall be going to perform the same, or returning from the performance thereof, shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour.*

Indictment.—An indictment charging that the defendant, in a churchyard, interrupted and obstructed W. C., clerk, in reading the order for the burial of the dead and interring a corpse, and unlawfully, and by threats and menaces, hindered the burial of the corpse, is bad in arrest of judgment, for not averring that W. C. was a clerk in holy orders, and lawfully acting as such in the burial of the corpse, and for not setting out the particular threats and menaces used. *Rea v. Cheere*, 7 D. & R. 461; 4 B. & C. 902.

c. On Magistrates or other Persons preserving Wrecks.

Statute.—By 24 & 25 Vict. c. 100, s. 37, *whosoever shall assault and strike or wound any magistrate, officer, or other person whatsoever lawfully authorized, in or on account of the exercise of his duty in or concerning the preser-*

vation of any vessel in distress, or of any vessel, goods or effects wrecked, stranded or cast on shore, or lying under water, shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years, and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour.

d. On Peace and other Officers in Execution of Duty.

Statute.]—By 24 & 25 Vict. c. 100, s. 38, whoever shall assault any person with intent to commit felony, or shall assault, resist or wilfully obstruct any peace officer in the due execution of his duty, or any person acting in aid of such officer, or shall assault any person with intent to resist or prevent the lawful apprehension or detainer of himself or of any other person for any offence, shall be guilty of a misdemeanor; and, being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour.

Authority of Officer—Warrant.]—A constable and his assistants who take a bailiff into custody during an affray to rescue his prisoner, in which the bailiff struck one of the assailants, and the prisoner was rescued, are guilty of an assault and a rescue, as the bailiff was authorized by his warrant. *Anon.*, 1 East, P. C. 305.

The defendant was convicted in a penalty with costs, or to be imprisoned seven days; the penalty not having been paid, a warrant was issued, under 11 & 12 Vict. c. 43, s. 25, for his apprehension, addressed "To the constable of G." It was given to a county policeman to execute. While he was attempting to apprehend the defendant, the defendant resisted and wounded the constable:—Held, that a county policeman had no authority to execute it, it being addressed to the parish constable; and that the apprehension was therefore illegal. *Reg. v. Sanders*, 1 L. R., C. C. 75; 36 L. J., M. C. 87; 16 L. T. 331; 15 W. R. 752; 10 Cox, C. C. 445.

C. was convicted of an assault on two police constables of the county police of Worcestershire in the execution of their duty, who were apprehending him in the city of Worcester under a warrant issued by two justices of and for the county of Worcestershire for his commitment to prison for default in payment of a fine, but not backed by any justice of and for the city of Worcester. Worcester is a borough having a separate commission of the peace with exclusive jurisdiction, and a separate police force. C. was not pursued from the county, but found in the city:—Held, that the conviction was wrong, that the constables were not acting in the execution of their duty in so executing such warrant. *Reg. v. Crompton*, 5 Q. B. D. 341; 49 L. J., M. C. 41; 42 L. T. 543; 28 W. R. 539; 44 J. P. 489.

No Warrant.]—A. was indicted for assaulting a policeman in the execution of his duty. It appeared that the policeman had gone into a public-house where the defendant was having high words with the landlady. The defendant tried to go into a room in the house in

which a guest was, and the policeman, without being desired to do so, collared him, and prevented him from going into the room, and A. struck the policeman, and several blows passed on both sides:—Held, that if the jury was satisfied that no breach of the peace was likely to be committed by the defendant on the guest in the room, it was no part of the policeman's duty to prevent the defendant from entering it; but, assuming that to be so, if the defendant used more violence than was necessary to repel the assault committed on him by the policeman, the defendant would be liable to be convicted of a common assault. *Reg. v. Mabel*, 9 C. & P. 474.

A constable (out of the limits of the Metropolitan Acts) when he is clearing a public-house, is not acting in the execution of his duty unless there is a nuisance or a disturbance of the peace. *Reg. v. Prebble*, 1 F. & F. 325.

A police constable, whilst standing outside the defendant's house, saw him take up a shovel and hold it in a threatening attitude over his wife's head, and heard him say at the same time, "If it was not for the policeman outside, I would split your head open." In about twenty minutes' time the defendant left his house, after saying that he would leave his wife altogether, and was taken into custody by the constable, who had no warrant, when he had proceeded a short distance in the direction of his father's residence; he resisted the constable, and was tried and convicted upon an indictment charging him with assaulting the constable whilst in the execution of his duty:—Held, that the constable was justified in apprehending the defendant, and that the conviction therefore was right. *Reg. v. Light*, Dears. & B. C. C. 332; 7 Cox, C. C. 389; 27 L. J., M. C. 1; 3 Jur., N. S. 1130.

The prisoner assaulted a police constable in the execution of his duty. The constable went for assistance, and after an interval of an hour returned with three other constables, when he found that the prisoner had retired into his house, the door of which was closed and fastened; after another interval of fifteen minutes the constables forced open the door, entered, and arrested the prisoner, who wounded one of them in resisting his apprehension:—Held, that as there was no danger of any renewal of the original assault, and as the facts of the case did not constitute a fresh pursuit, the arrest was illegal. *Reg. v. Marsden*, 1 L. R., C. C. 131; 37 L. J., M. C. 80; 18 L. T., 298; 16 W. R. 711; 11 Cox, C. C. 90.

B., a county court bailiff, went to levy a judgment debt on W., and calling at W.'s door, W. opened it; B. then put his foot inside the door, and tried to get in against the wish of W., who assaulted B. W. was summoned for assaulting B., and the complaint was dismissed by the justices:—Held, that they were right, as B. was not in the execution of his duty in attempting to force open a debtor's door. *Broughton v. Wilkerson*, 44 J. P. 781.

Proof of, at Trial.]—D. was indicted for assaulting a sub-bailiff of a county court. The latter was endeavouring to apprehend D. under a warrant issued out of the county court, when the assault was committed, but not with more violence than was necessary to prevent the apprehension:—Held, that the production of the county court warrant at the trial was a sufficient justification of the act of the bailiff, without

proof of the previous proceedings in the county court. *Reg. v. Davis*, 8 Cox, C. C. 486; L. & C. 64; 7 Jur., N. S. 1040; 4 L. T. 559.

The written list of sentences passed upon the prisoners given to the gaoler by the clerk of the assize, and which is his only authority for their detention, is not evidence that they are in legal custody on an indictment for assaulting the turnkey in the execution of his duty. *Reg. v. Bourdon*, 2 Cox, C. C. 169.

Knowledge of Defendant.]—To support a charge of assault on a constable in the execution of his duty, it is not necessary that the defendant should know that he was a constable then in the execution of his duty; it is sufficient that the constable should have been actually in the execution of his duty and then assaulted. *Reg. v. Forbes*, 10 Cox, C. C. 362.

Manner in which Authority exercised.]—An excise officer gave the defendant a search warrant to look at, who then refused to deliver it up, and a scuffle ensued; on an indictment for an assault, the question left to the jury was, whether the officer used more force than was necessary to recover possession of the warrant. *Rea v. Milton*, M. & M. 107; S. C., nom. *Rea v. Milton*, 3 C. & P. 31.

One of the marshals of the city of London, whose duty it was, on the day of a public meeting at Gurdhall, to see that a passage was kept for the transit to their carriages of the members of the corporation and others, directed a person in the front of a crowd at the entrance to stand back, and, on being told by him that he could not for those behind him, struck him immediately on the face, saying that he would make him:—Held, that in so doing the marshal exceeded his authority, and that he should have confined himself to the use of pressure, and should have waited a short time to afford an opportunity for removing the party in a more peaceable way. *Imeson v. Cope*, 5 C. & P. 193.

Obstructing Apprehension of Felon.]—An innkeeper, having an escaped felon in his house, to the policeman, who had remarked, "You scoundrel, how dare you harbour a felon?" said "You had better go and find him;" but he did nothing, and the policeman went up stairs and saw the felon make his escape from the window:—Held, no evidence of an obstruction of the felon's apprehension. *Reg. v. Green*, 8 Cox, C. C. 441.

Indictment—Refusing to Assist Constable.]—An indictment against a person for refusing to aid and assist a constable in the execution of his duty, and prevent an assault made upon him by prisoners in his custody on a charge of felony, with intent to resist their lawful apprehension, is sufficient, without stating how the apprehension became lawful; and it is enough if it states a refusal to assist, without the further allegation that he did not, in fact, aid and assist. *Reg. v. Sherlock*, 1 L. R., C. C. 20; 35 L. J., M. C. 92; 12 Jur., N. S. 126; 13 L. T. 623; 14 W. R. 288; 10 Cox, C. C. 170.

e. On Seamen, Keelmen, or Casters.

By 24 & 25 Vict. c. 100, s. 40, *whoever shall unlawfully and with force hinder or prevent any seaman, keelman, or caster from working at*

or exercising his lawful trade, business, or occupation, or shall beat or use any violence to any such person with intent to hinder or prevent him from working at or exercising the same, shall, on conviction thereof before two justices of the peace, be liable to be imprisoned and kept to hard labour in the common gaol or house of correction for any term not exceeding three months; provided that no person who shall be punished for any such offence by reason of this section shall be punished for the same offence by virtue of any other law whatsoever.

f. On Obstructing Sale of Grain, or its Free Passage.

By 24 & 25 Vict. c. 100, s. 39, *whoever shall beat or use any violence or threat of violence to any person, with intent to deter or hinder him from buying, selling or otherwise disposing of, or to compel him to buy, sell or otherwise dispose of any wheat or other grain, flour, meal, malt or potatoes, in any market or other place, or shall beat or use any such violence or threat to any person having the care or charge of any wheat or other grain, flour, meal, malt, or potatoes, whilst on the way to or from any city, market town or other place, with intent to stop the conveyance of the same, shall, on conviction thereof before two justices of the peace, be liable to be imprisoned and kept to hard labour in the common gaol or house of correction for any term not exceeding three months; provided that no person who shall be punished for any such offence by virtue of this section shall be punished for the same offence by virtue of any other law whatsoever.*

g. Arising from Trade Combinations or Conspiracies.

(38 & 39 Vict. c. 86.)

h. Occasioning Actual Bodily Harm.

By 24 & 25 Vict. c. 100, s. 47, *whoever shall be convicted upon an indictment of any assault occasioning actual bodily harm, shall be liable, at the discretion of the court, to be kept in penal servitude for the term of five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour. (Former provision, 14 & 15 Vict. c. 100, s. 29, repealed by 24 & 25 Vict. c. 95.)*

Communicating Infectious Disease.]—An indictment for inflicting actual bodily harm is sustainable by evidence that a man, knowing that he has an infectious disease, has intimacy with a girl without informing her of the fact, by means of which the disease was communicated to her. *Reg. v. Sinclair*, 13 Cox, C. C. 28; S. P., *Reg. v. Bennett*, 4 F. & F. 1105. Cp. *Hegarty v. Shine*, 14 Cox, C. C. 145; 4 L. R., Ir. 288—C. A.

i. Indictment and Evidence.

Indictment—Non-use of Statutable Word.]—The 24 & 25 Vict. c. 100, s. 18, enacts that whoever shall unlawfully and maliciously by any means "cause" any grievous bodily harm to any person, &c., shall be guilty of felony. An indictment framed upon this section alleged that "A. unlawfully and maliciously did 'inflict'

grievous bodily harm," not using the statutable word "cause":—Held, that the indictment was sufficient. *Reg. v. Bray*, 15 Cox, C. C. 197.

Validity of.]—An indictment for an assault, false imprisonment and rescue, stated that the judges of the court of record of the town and county of P. issued their writ, directed to T. B., one of the sergeants at mace to the said town and county, to arrest W., by virtue of which T. B. was proceeding to arrest W., within the jurisdiction of the court, but that the defendant assaulted T. B. in the due execution of his office, and prevented the arrest:—Held, that such indictment was bad, it not appearing that T. B. was an officer of the court; and that there could not be judgment after a general verdict on such a count as for a common assault and false imprisonment, because the jury must be taken to have found that the assault and imprisonment were for the cause therein stated, which cause appears to have been that the officer was attempting to make an illegal arrest of another, which, being a breach of the peace, the defendant might, for aught that appeared, have lawfully interfered to prevent. *Reg. v. Osmer*, 5 East, 304; 1 Smith, 555.

An indictment charging that the defendant made an assault upon Henry B., and him the said William B. B. did beat, wound and ill-treat, is good, in arrest of judgment. *Reg. v. Crespin*, 11 Q. B. 913; 17 L. J., M. C. 128; 12 Jur. 433.

Against Two.]—An indictment against two for an assault on two, is bad. *Anon.*, Lofft, 271. And see *Reg. v. Burfield*, 2 Burr. 983.

Joinder of Counts.]—A count for night-poaching may be joined with a count on 9 Geo. 4, c. 69, s. 2, for assaulting a gamekeeper authorized to apprehend, and with counts for assaulting a gamekeeper in the execution of his duty, and for a common assault. *Reg. v. Finucane*, 5 C. & P. 551.

Record is Evidence.]—Where a defendant has pleaded guilty to an indictment for an assault, the record is evidence against him in an action for the same assault. *Reg. v. Fontaine Moreau*, 11 Q. B. 1033; 17 L. J., Q. B. 187; 12 Jur. 626.

Proof of Assault on Person bearing Name.]—On an indictment for an assault on A. B., it is sufficient to prove that an assault was committed on a person bearing that name, although two persons bore the same name, viz. A. B. the elder, and A. B. the younger, and the assault had been committed on the latter only. *Reg. v. Peace*, 3 B. & A. 579.

j. Punishment.

Statute.]—By 24 & 25 Vict. c. 100, s. 47, *who-soever shall be convicted upon an indictment for a common assault shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding one year, with or without hard labour.*

k. Costs of Prosecution.

Statute.]—By 24 & 25 Vict. c. 100, s. 74, *where any person shall be convicted on any indictment of any assault, whether with or without battery and wounding, or either of them, such person may,*

if the court think fit, in addition to any sentence which the court may deem proper for the offence, be adjudged to pay to the prosecutor his actual and necessary costs and expences of the prosecution, and such moderate allowance for the loss of time as the court shall by affidavit, or other inquiry and examination, ascertain to be reasonable; and, unless the sum so awarded shall be sooner paid, the offender shall be imprisoned for any term the court shall award, not exceeding three months, in addition to the term of imprisonment, if any, to which the offender may be sentenced for the offence.

Bar to Subsequent Action.]—A conviction of a defendant for unlawfully wounding, and his being sentenced therefor to a term of imprisonment, and to pay a sum of money to the prosecutor of the indictment, for his necessary costs of the prosecution, and a moderate allowance for his loss of time, pursuant to 24 & 25 Vict. c. 100, s. 74, form no bar to his subsequently suing the defendant for the same assault, and recovering damages for his bodily suffering and medical expenses occasioned thereby. *Lowe v. Horwarth*, 13 L. T. 297.

Levy by Distress.]—By 24 & 25 Vict. c. 100, s. 75, *the court may, by warrant under hand and seal, order such sum as shall be so awarded to be levied by distress and sale of the goods and chattels of the offender, and paid to the prosecutor, and that the surplus, if any, arising from such sale, shall be paid to the owner; and in case such sum shall be so levied, the imprisonment awarded until payment of such sum shall thereupon cease.*

1. Summary Convictions.

i. In what Cases.

By 24 & 25 Vict. c. 100, s. 42, *where any person shall unlawfully assault or beat any other person, two justices of the peace, upon complaint by or on behalf of the party aggrieved, may hear and determine such offence, and the offender shall, upon conviction thereof before them, at the discretion of the justices, either be committed to the common gaol or house of correction, there to be imprisoned, with or without hard labour, for any term not exceeding two months, or else shall forfeit and pay such fine as shall appear to them to be meet, not exceeding, together with costs (if ordered), the sum of 5l.; and if such fine as shall be so awarded, together with the costs (if ordered), shall not be paid, either immediately after the conviction or within such period as the said justices shall at the time of the conviction appoint, they may commit the offender to the common gaol or house of correction, there to be imprisoned, with or without hard labour, for any term not exceeding two months, unless such fine and costs be sooner paid. (Former provision, 9 Geo. 4, c. 31, s. 27, repealed by 24 & 25 Vict. c. 95.)*

Bailiff—Assault on.]—A county court bailiff, while acting in the course of his duty, was assaulted by F., who was summoned for the assault under 9 & 10 Vict. c. 95, s. 114:—Held, that that section was not impliedly repealed by 24 & 25 Vict. c. 100, s. 42, and that the justices could not decline jurisdiction on the ground that a question might arise as to the execution under

the process of a court of justice. *Reg. v. Briggs*, 47 J. P. 615.

By s. 43, when any person shall be charged before two justices of the peace with an assault or battery upon any male child whose age shall not in the opinion of such justices exceed fourteen years, or upon any female, either upon the complaint of the party aggrieved or otherwise, the said justices, if the assault or battery is of such an aggravated nature that it cannot in their opinion be sufficiently punished under the provisions hereinbefore contained as to common assaults and batteries, may proceed to hear and determine the same in a summary way, and, if the same be proved, may convict the person accused; and every such offender shall be liable to be imprisoned in the common gaol or house of correction, with or without hard labour, for any period not exceeding six months, or to pay a fine not exceeding (together with costs) the sum of 20l., and in default of payment to be imprisoned in the common gaol or house of correction for any period not exceeding six months, unless such fine and costs be sooner paid, and, if the justices shall so think fit, in any of the said cases, shall be bound to keep the peace and be of good behaviour for any period not exceeding six months from the expiration of such sentence. (Former provision, 16 & 17 Vict. c. 30, s. 1.)

By s. 44, if the justices, upon the hearing of any such case of assault or battery upon the merits, where the complaint was preferred by or on behalf of the party aggrieved, under either of the last two preceding sections, shall deem the offence not to be proved, or shall find the assault or battery to have been justified, or so trifling as not to merit any punishment, and shall accordingly dismiss the complaint, they shall forthwith make out a certificate under their hands stating the fact of such dismissal, and shall deliver such certificate to the party against whom the complaint was preferred. (Former provision, 9 Geo. 4, c. 31, s. 27.)

By s. 45, if any person, against whom any such complaint as in either of the last three preceding sections mentioned shall have been preferred by or on the behalf of the party aggrieved, shall have obtained such certificate, or having been convicted, shall have paid the whole amount adjudged to be paid, or shall have suffered the imprisonment or imprisonment with hard labour awarded, in every such case he shall be released from all further or other proceedings, civil or criminal, for the same cause. (Former provision, 9 Geo. 4, c. 31, s. 28.)

By s. 46, it is provided, that in case the justices shall find the assault or battery complained of to have been accompanied by any attempt to commit felony, or shall be of opinion that the same is, from any other circumstance, a fit subject for a prosecution by indictment, they shall abstain from any adjudication thereupon, and shall deal with the case in all respects in the same manner as if they had no authority finally to hear and determine the same: provided also, that nothing herein contained shall authorize any justices to hear and determine any case of assault or battery in which any question shall arise as to the title to any lands, tenements or hereditaments, or any interest therein or accruing therefrom, or as to any bankruptcy or insolvency, or any execution under the process of any court of justice. (Former provision, 9 Geo. 4, c. 31, s. 22.)

ii. Hearing and Certificate.

Complainant or Informant Protesting against Hearing.]—An information made before a magistrate stated that the informant, having been assaulted and beaten by another person, prayed that he might be bound over to keep the peace towards him. On the magistrates before whom the case was heard proceeding to deal with the merits of the question of the assault, the informant protested against their adjudicating upon it:—Held, that the justices had no jurisdiction to convict summarily the offending party of the assault against the will of the informant, as under 9 Geo. 4, c. 31, s. 27, the justices had no jurisdiction to convict of an assault unless the party aggrieved complained of that assault before them with a view to their adjudicating upon it. *Reg. v. Dery or Totnes (Justices)*, 2 L. M. & P. 230; 20 L. J., M. C. 189; 15 Jur. 227.

Hearing—What is.]—A party having been summoned before two justices under 9 Geo. 4, c. 31, s. 27, for an assault, and having appeared and pleaded not guilty, the complainant declined to proceed, stating that he meant to bring an action. The justices thereupon dismissed the complaint, and gave the defendant a certificate as follows:—"We deemed the offence not proved, inasmuch as the complainant did not offer any evidence in support of the information, and have accordingly dismissed the complaint:—"Held, that what passed before the justices constituted a hearing, and that the certificate was a complete bar to an action for the assault. *Turncliffe v. Tedd*, 5 C. B. 553; 17 L. J., M. C. 67.

A., having laid an information against B. for an assault, under 9 Geo. 4, c. 31, took out a summons, which was served on B., but before the day fixed for the hearing, gave notice to B. that the summons was withdrawn, and also to the magistrate's clerk that he, A., should not attend on the day. B., however, attended on the day, and claimed, in the absence of the complainant, to have the charge dismissed, and to have granted a certificate of dismissal, pursuant to the statute. The justices dismissed the charge, and granted a certificate, which stated the above facts:—Held, that what was done amounted to a hearing within 9 Geo. 4, c. 31, s. 27, and that the certificate accordingly was a bar to an action for the same assault. *Vaughton v. Bradshaw*, 9 C. B., N. S. 103; 30 L. J., C. P. 93; 7 Jur., N. S. 468; 3 L. T. 373; 9 W. R. 120.

Certificate—To what Offences a Bar.]—Where, under 9 Geo. 4, c. 31, ss. 27—29, a complaint of assault or battery has been made to two justices of the peace, who dismissed the complaint and gave the party a certificate accordingly, the certificate may be pleaded in bar to an indictment founded on the same facts, charging assault and battery, accompanied by malicious cutting and wounding, so as to cause grievous or actual bodily harm. *Reg. v. Eltrington*, 1 B. & S. 688; 9 Cox, C. C. 86; 31 L. J., M. C. 14; 8 Jur., N. S. 97; 5 L. T. 284; 10 W. R. 13.

A previous summary conviction for an assault under 24 & 25 Vict. c. 100, s. 45, is not a bar to an indictment for manslaughter of the party assaulted, founded upon the same facts. *Reg. v. Morris*, 1 L. R., C. C. 90; 36 L. J., M. C. 84; 16 L. T. 636; 15 W. R. 990; 10 Cox, C. C. 480.

A man and his wife having each been struck

by the defendant, summoned him before justices for the assaults. The justices, after hearing the case, merely fined him for the assault on the man, but committed him to prison for fourteen days in respect of the assault on the woman, who was much hurt. He paid the fine and suffered the imprisonment. An action having been afterwards brought against him for the injuries to the wife, he set up his conviction and imprisonment as a release, under 24 & 25 Vict. c. 100, s. 45. The plaintiffs contended that he had been punished only for a common assault, and not for the distinct offence of an aggravated assault, and that, therefore, the action in respect of the more serious injury was not "for the same cause" within the meaning of the section. The court thought that the whole case being before the justices, they had power to deal with it as an aggravated assault, and had so treated it; and therefore the defendant was, by s. 45, released from the action. *Holden v. King*, 46 L. J., Ex. 75; 35 L. T. 479; 25 W. R. 62.

A man assaulted a wife, and for such assault was fined by the justices under 24 & 25 Vict. c. 100, and paid the fine:—Held, that an action by the husband in respect of the consequential damage to himself by reason of the assault on his wife was barred under s. 45. *Masper v. Brown*, 1 C. P. D. 97; 45 L. J., C. P. 203; 34 L. T. 254; 24 W. R. 369.

A certificate applied for by the party entitled, five days after a complaint had been dismissed, and granted two days after the application, but dated as of the day upon which the complaint was made, is made out forthwith, and is a good defence to a subsequent action for the same assault. *Costar v. Hetherington*, 1 El. & Bl. 802; 28 L. J., M. C. 198; 5 Jur., N. S. 985.

— **Granting is a ministerial act.**—The granting a certificate of dismissal of the complaint is, when a case is brought within s. 27 of the 9 Geo. 4, c. 31, a ministerial, not a judicial act, and a magistrate is therefore bound to grant it. *Hancock v. Somes*, 1 El. & Bl. 795; 28 L. J., M. C. 196; 5 Jur., N. S. 983.

The certificate, if drawn up forthwith and delivered to the party against whom the complaint is preferred, is a good bar to a subsequent action for the assault, though not drawn up in the presence of the parties, or applied for by the party against whom the complaint was preferred. *Id.*

— **Pleading.**—To an action for an assault, the defendant pleaded that he had been summoned by the plaintiff before a magistrate, who convicted him in the costs of the complainant and hearing, which he had paid. At the trial the magistrate's clerk produced his note-book, by which it appeared that the magistrate had merely ordered the defendant to enter into his recognizances, and pay the expenses thereof; the clerk also said in such cases no conviction was ever drawn up:—Held, that the plea was bad, and did not disclose a defence under 24 & 25 Vict. c. 100, s. 45; that it was not proved; and that, even if there was a conviction, the proper proof was not adduced. *Hartley v. Hindmarsh*, 1 L. R., C. P. 553; 35 L. J., M. C. 255; 12 Jur., N. S. 502; 14 W. R. 862; 1 H. & R. 607.

If a party is caught before two magistrates with an assault, and they dismiss the complaint,

giving him a certificate, he cannot avail himself of this certificate as a defence to an action for the same assault, unless it is specially pleaded. *Harding v. King*, 6 C. & P. 427.

To an action of assault and battery, a certificate, under 24 & 25 Vict. c. 94, s. 44, may be pleaded, together with a plea that the assault was committed in order to prevent a breach of the peace. *Lawler v. Kelly*, 15 Ir. C. L. R., App. 1.

— **Proof of—Prima facie only one Assault on one Day.**—When an assault charged in an indictment and that referred to in a certificate of dismissal by a magistrate appear to have been on the same day, it is prima facie evidence that they are one and the same assault, and it is incumbent on the prosecutor to shew that there was a second assault on the same day, if he alleges that such is the case. *Reg. v. Westley*, 11 Cox, C. C. 139.

The appearance of the defendant before the magistrate, the recital in the certificate of the fact of a complaint having been made, and of a summons having been issued, are sufficient evidence of those facts. *Id.*

Jurisdiction—Claim of Title to Land.—The power given to justices by 24 & 25 Vict. c. 100, s. 42, of summarily hearing and determining charges of assault and battery, is, by s. 46, ousted in any case where a question as to the title to land arises, and they cannot in such a case convict a person for using more violence than was necessary. *Reg. v. Pearson*, 5 L. R., Q. B. 237; 39 L. J., M. C. 76; 22 L. T. 126.

— **Aggravated, upon Women and Children.**—The 16 & 17 Vict. c. 30, s. 1 (repealed), gave jurisdiction to two justices of the peace sitting at a place where petty sessions are usually held to convict persons of certain assaults, and a warrant of commitment in the general form provided by the 11 & 12 Vict. c. 43, Schedule (P.), was sufficient, without any allegation that the convicting justices were sitting at a place where petty sessions are usually held. *Allison, Ex parte*, 10 Ex. 561; 24 L. J., M. C. 73.

An information was laid against a man for assaulting and abusing a woman. On the hearing before the magistrates, she gave evidence tending to shew that the man had committed a rape on her. The magistrates convicted him of an aggravated assault, under 16 & 17 Vict. c. 30. The conviction recited the information, and found the assault proved, and sentenced him, for his offence, to be imprisoned in the house of correction for six calendar months:—Held, that the conviction for the minor offence was good. *Thompson, Ex parte*, 6 Jur., N. S. 1247; *S. P., Wilkinson v. Dutton*, 3 B. & S. 821; 32 L. J., M. C. 152.

An information before justices charged the defendant with having unlawfully assaulted and abused a female. She and the defendant were each represented by attorneys, and at the hearing, while the attorney for the woman was opening his case, the attorney for the defendant objected that the facts he had stated constituted a case of rape, and that the justices had no jurisdiction. It was then suggested that the case should be treated as a charge of an aggravated assault. The case proceeded, and the defendant was convicted of an aggravated

assault. It appeared by affidavits upon an application for a *habeas corpus*, with a view to the discharge of the defendant, that the evidence of the woman was to the effect that the defendant had ravished her:—Held, per Pollock, C. B., and Wilde, B., that the charge was one over which the justices had no jurisdiction; and that it was competent for the court to look at the evidence with a view to see whether, in point of fact, the case was within the jurisdiction of justices. *Thompson, In re*, 6 H. & N. 193; 9 Cox, C. C. 70; 30 L. J., M. C. 19; 7 Jur., N. S. 48; 3 L. T. 409; 9 W. R. 203.

Held, per Bramwell, B., and Channell, B., that the charge did not imply more than a common assault, that the justices had jurisdiction, and that the court could not review the decision of the justices upon the fact. *Id.*

In order to support a conviction for an aggravated assault there must be an act upon which aggravation supervenes, and with which it is in some way connected. *Munday v. Maiden*, 33 L. T. 377; 24 W. R. 57.

A man placed a girl of eight years old on his knee and kissed her. About a quarter of an hour afterwards, without asking her to do anything, or again touching her, he exposed his person and abused himself in her presence. The justices sentenced him to six months' hard labour for an assault of an aggravated nature on a female, under 24 & 25 Vict. c. 100, s. 43:—Held, that what took place after the assault was over could not be said to render the assault one of an aggravated nature within the words of this section, and that the conviction must be quashed. *Id.*

A conviction before justices, under 24 & 25 Vict. c. 100, s. 43, should shew facts to justify the sentence, and shew and allege that the offence was of so aggravated a nature that it could not be adequately dealt with under s. 42. *Rice, In re*, 7 Ir. R., C. L. 74.

Amounting to Felony.—A party was convicted summarily by two justices for an assault. The act appeared to have been done with intent to commit an unnatural offence, or to solicit such offence, but not to have been attended with violence. A *certiorari* was moved for, on the ground that the offence, if committed, was within 9 Geo. 4, c. 31, s. 29, which prevents justices from convicting where an attempt to commit felony appears. The court refused to interfere, as no excess of jurisdiction appeared on the face of the conviction, and the evidence, of which the magistrates were the judges, did not clearly shew an intention to commit felony. *Anon.*, 1 B. & Ad. 382.

Fines.—Before 24 & 25 Vict. c. 100, s. 42.—By 9 Geo. 4, c. 31, s. 27, power was given to two justices, in cases of assault, to impose upon the offender a fine not exceeding 5*l.*, "to be paid to some one of the overseers of the poor, or to some other officer of the parish, township, or place in which the offence shall have been committed, to be by such overseer or officer paid over to the use of the general rate of the county, riding, or division in which the parish, township, or place shall be situate;" and s. 35 provided that the conviction might be drawn up in a given form, or in any other form of words to the same effect:—Held, that a conviction by which the penalty was ordered to be paid "to the treasurer

of the county of C., in which the offence was committed, to be by him applied according to the directions of the statute," or the party in default to be imprisoned for two months, was bad, and that the justices were liable in trespass for the imprisonment of the party under it. *Chaddock v. Wilbraham*, 5 C. B. 645; 3 New Sess. Cas. 227; 17 L. J., M. C. 79; 12 Jur. 136.

A. was summoned under 9 Geo. 4, c. 31, ss. 27, 33, for an assault. He did not appear, and the justices, upon proof of service, heard the case and convicted A. The conviction was drawn up in the form given in s. 35, and by it A. was adjudged to forfeit and pay 2*l.* 10*s.* and 11*s.* 6*d.* for costs; and, in default of immediate payment, to be imprisoned for six weeks, unless the sum should be sooner paid; and the conviction directed that the 2*l.* 10*s.* should be paid to one of the overseers of the parish within which the offence was committed, and the 11*s.* 6*d.* to the party aggrieved. And directly thereafter, no payment being made, the justices, in the absence of A., and without further summons, issued a warrant of commitment for default of payment:—Held, that the commitment was legal. *Arnold v. Dimsdale*, 2 El. & Bl. 580; 22 L. J., M. C. 161; 17 Jur. 1157.

Requiring Recognizances.—An information was laid against a person for an assault and battery, and a summons issued against him for that offence. At the hearing, the justices dismissed the information, and gave him a certificate, but they ordered him, in respect of the charge, to enter into his own recognizance in 50*l.* to keep the peace for six months:—Held, that, notwithstanding the justices dismissed the information, they were legally justified in requiring a recognizance to keep the peace. *Davis, Ex parte*, 24 L. T. 547.

10. TRIAL.

Conviction for Misdemeanor on Trial for Felony.—By 14 & 15 Vict. c. 19, s. 5, *if, upon the trial of any indictment for any felony, except murder or manslaughter, where the indictment alleges that the defendant did cut, stab or wound any person, the jury shall be satisfied that the defendant is guilty of the cutting, stabbing or wounding, charged in the indictment, but are not satisfied that the defendant is guilty of the felony charged, the jury may acquit the defendant of such felony, and find him guilty of unlawfully cutting, stabbing or wounding, and the defendant shall be liable to be punished in the same manner as if convicted upon an indictment for the misdemeanor of cutting, stabbing or wounding.*

Prisoner must Plead to Felony.—Where a prisoner is indicted for feloniously cutting and wounding, he will not be permitted to plead guilty to a common assault merely. He must plead to the felony, and if no evidence of the felony is offered he may be acquitted of the felony and found guilty of the assault on his own confession. *Reg. v. Calverte*, 3 C. & K. 201.

When Verdict for Unlawfully Wounding is Sustainable.—A., an under servant, who had lost his right arm, was beaten by B., an upper servant, for misconduct. A. took out a knife and wounded B.:—Held, on a trial for feloniously

wounding, that if A. did this in self-defence only he ought to be acquitted; but if A. used more violence than was necessary for that purpose he ought to be convicted of the misdemeanor of wounding only under 14 & 15 Vict. c. 12, s. 5. *Reg. v. Huntley*, 3 C. & K. 142.

The statute 14 & 15 Vict. c. 19, s. 5, only applies where the indictment alleges a felonious cutting, stabbing or wounding. Upon an indictment charging a felonious shooting with intent to do grievous bodily harm, and doing grievous bodily harm with intent to do grievous bodily harm, it is not competent for the jury to convict of unlawfully wounding. *Reg. v. Miller*, 14 Cox, C. C. 356.

To support a verdict of guilty of unlawfully wounding, under 14 & 15 Vict. c. 19, s. 5, the act must be done as well maliciously as unlawfully. *Reg. v. Ward*, 1 L. R., C. C. 356; 41 L. J., M. C. 69; 26 L. T. 43; 20 W. R. 392; 12 Cox, C. C. 123.

A man, who was jealous of persons going in pursuit of wild-fowl, fired, while the prosecutor was on the water in his punt in pursuit of wild-fowl about twenty-five yards off, to frighten and deter him from again coming into the creek for the purpose of fowling. As the prosecutor slewed his punt round, he was struck by the shots from the prisoner's gun; but if he had not slewed the boat round the shot would not have struck him:—Held, that a conviction for unlawfully and maliciously wounding the prosecutor under 14 & 15 Vict. c. 99, s. 5, was supported by the evidence. *Id.*

On what Count Verdict Entered.]—To an indictment for stabbing, was added a count for a common assault. The trial had considerably advanced before this was discovered, and the judge allowed the case to proceed, and left it to the jury without noticing the count for the common assault. The jury returned a verdict of guilty, which was entered on the count for stabbing with intent to do grievous bodily harm. The judges held the conviction right. *Reg. v. Jones*, 8 C. & P. 776; 2 M. C. C. 94.

An indictment contained counts charging an assault, and unlawfully and maliciously inflicting grievous bodily harm, and also a count for a common assault. At the trial evidence was given that the prisoner inflicted serious bodily injuries upon the prosecutor. The jury found the prisoner guilty of an aggravated assault without premeditation, and that it was done under the influence of passion:—Held, that the verdict was rightly entered on the record on the counts charging an assault and unlawfully and maliciously inflicting grievous bodily harm. *Reg. v. Sparrow*, 8 Cox, C. C. 393; Bell, C. C. 298; 30 L. J., M. C. 43; 6 Jur., N. S. 1122; 3 L. T. 445; 9 W. R. 58.

On what Indictments Conviction for Common Assault Sustainable.]—Upon a count for assaulting, beating, wounding, and occasioning actual bodily harm against the statute, the prisoner may be convicted of a common assault. *Reg. v. Oliver*, 8 Cox, C. C. 384; Bell, C. C. 287; 30 L. J., M. C. 12; 6 Jur., N. S. 1214; 3 L. T. 311; 9 W. R. 60.

Upon an indictment charging the defendants in the first count with inflicting grievous bodily harm; in the second count with unlawfully and

maliciously cutting, stabbing and wounding; and in the third count with assaulting and occasioning actual bodily harm; the jury returned a verdict of guilty of a common assault. The chairman declined to take that verdict, on the ground that a common assault was not included in the indictment, and told the jury to reconsider their verdict. The jury then found the defendants guilty, and a verdict was entered of guilty of an assault occasioning bodily harm, whereupon the chairman sentenced the prisoners:—Held, that the first verdict ought to have been taken, and that the second ought not, and that the prisoners ought not to undergo the sentence; that there had been a mis-trial, and that a venire de novo should issue. *Reg. v. Yeadon*, 9 Cox, C. C. 91; L. & C. 81; 31 L. J., M. C. 70; 7 Jur., N. S. 1128; 5 L. T. 329; 10 W. R. 64.

If, on an indictment for abduction on 9 Geo. 4, c. 31, s. 19, the jury was not satisfied that the prisoner was actuated by motives of lucre, and they were satisfied that he used force to the person of the lady in taking her away, and that he took her away against her consent, they might convict him of an assault under 7 Will. 4 & 1 Vict. c. 85, s. 11. *Reg. v. Barratt*, 9 C. & P. 387.

An indictment charged the prisoner in a first count with unlawfully and maliciously wounding, and in the second count with unlawfully and maliciously inflicting grievous bodily harm. The jury found the prisoner guilty of an assault:—Held, that he could be properly convicted of an assault on the indictment under 24 & 25 Vict. c. 100, s. 20, as the offences charged were misdemeanors, and each of them necessarily included the lesser misdemeanor of an assault. *Reg. v. Taylor*, *Reg. v. Cunwell*, 1 L. R., C. C. 194; 20 L. T. 402; 17 W. R. 623; 11 Cox, C. C. 261.

Two were indicted, under 24 & 25 Vict. c. 96, s. 42, for feloniously assaulting the prosecutor with intent to rob him. The jury found them guilty of an assault, but negatived the intent charged:—Held, that they could not, upon this indictment and finding, be convicted of a common assault. *Reg. v. Wilkes*, 12 Cox, C. C. 240.

A. presented a loaded pistol at B., but was prevented from pulling the trigger:—Held, that A. could be properly convicted of this assault, on an indictment for feloniously attempting to discharge loaded arms at B. *Reg. v. St. George*, 9 C. & P. 483.

B. was indicted, with three others, for an assault with intent to do some grievous bodily harm. It was proved that he, with the other prisoners, had assaulted the prosecutor, and afterwards they had returned together and picked up some stones. Then B. withdrew, and the other prisoners threw the stones and wounded the prosecutor. The jury found the three prisoners who threw the stones guilty of the felony, and B. guilty only of a common assault:—Held, that B. was rightly convicted. *Reg. v. Phillips*, 3 Cox, C. C. 225.

In Cases of Robbery.]—*See ROBBERY.*

Jury Discharged—Prisoner Pleading Guilty to Common Assault.]—On an indictment for a felonious assault, the jury, being unable to agree as to the felonious intent, was discharged by arrangement, in order that the prisoner might plead guilty to a common assault with a view

to compensation. *Reg. v. Roxburgh*, 12 Cox, C. C. 8.

C. ABORTION, ATTEMPTS TO PROCURE.

Statute.—By 24 & 25 Vict. c. 100, s. 58, *every woman, being with child, who, with intent to procure her own miscarriage, shall unlawfully administer to herself any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, and whosoever, with intent to procure the miscarriage of any woman, whether she be or be not with child, shall unlawfully administer to her, or cause to be taken by her, any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever, with the like intent, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (Former provisions, 7 Will. 4 & 1 Vict. c. 85, s. 6; 9 Geo. 4, c. 31, s. 13. By 9 Geo. 4, c. 31, the 43 Geo. 3, c. 58, Lord Ellenborough's Act, was repealed.)*

By s. 59, *whosoever shall unlawfully supply or procure any poison or other noxious thing, or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used or employed, with intent to procure the miscarriage of any woman, whether she be or be not with child, shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for the term of five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour.*

What is a Noxious Thing.—A small quantity of savin, not sufficient to do more than produce a little disturbance in the stomach, was not a noxious thing within 7 Will. 4 & 1 Vict. c. 85, s. 6. *Reg. v. Perry*, 2 Cox, C. C. 223.

Upon an indictment, under 24 & 25 Vict. c. 100, s. 59, for supplying a certain noxious thing, knowing that the same is intended to be used with intent to procure miscarriage, it is necessary to prove that the thing supplied is noxious. The supplying an innocuous drug, whatever may be the intent of the person supplying it, is not an offence against that enactment. *Reg. v. Isaacs*, L. & C. 220; 9 Cox, C. C. 228; 32 L. J., M. C. 52; 9 Jur., N. S. 212; 7 L. T., 365; 11 W. R. 95.

A man and woman were jointly indicted for feloniously administering to C. a noxious thing to the jurors unknown, with intent to procure miscarriage. C. being in the family way, went to the male prisoner, who said he would give her some stuff to put her right, and gave her a light-coloured medicine, and told her to take doses of it till she became in pain. She did so, and it made her ill. She then went to him again, and he said the safest course would be to get her a place to go to. He told her that he had found a place for her at L., and gave her some more of the stuff, which he said would take effect when she got there. They went together to L. and met the female prisoner, who said she had been down to the station several times the

day before to meet them. C. then began to feel pain, and told the female prisoner of it, whereupon the male prisoner told the latter what he had given C. They all went home to the female prisoner's, and the male prisoner then gave C. another bottle of similar stuff in the female prisoner's presence, and told her to take it like the other. She did so, and became very ill, and next day had a miscarriage, the female prisoner attending on her.—Held, that there was evidence that the stuff administered was a noxious thing within 24 & 25 Vict. c. 100, s. 58. *Reg. v. Hollis*, 28 L. T. 455.

The prisoner was convicted, under 24 & 25 Vict. c. 100, s. 58, of having feloniously and unlawfully caused to be taken by E. V. a certain "noxious thing," to wit, half an ounce of oil of juniper, with intent to procure the miscarriage of the said E. V. It was proved that quantities of oil of juniper considerably less than half an ounce are commonly taken medicinally without any bad effect, but that a half ounce produces ill effects, and is to a pregnant woman dangerous. The question reserved was whether there was evidence that the half ounce of oil of juniper was a "noxious thing" within the statute.—Held, that there was evidence that it was a "noxious thing" within the statute, and that the conviction was right. *Reg. v. Cramp*, 5 Q. B. D. 307; 49 L. J., M. C. 44; 42 L. T. 442; 28 W. R. 701; 44 J. P. 411; 14 Cox, C. C. 401. See also per Denman, J., on the trial of the case, 14 Cox, C. C. 390.

Causing to be Taken.—If A. procures poison and delivers it to B., both intending that B. should take it for the purpose of procuring abortion, and B. afterwards takes it with that intent in the absence of A., A. might be convicted under 7 Will. 4 & 1 Vict. c. 85, s. 6, of causing it to be taken. *Reg. v. Wilson*, Dears. & B. C. C. 127; 7 Cox, C. C. 190; 26 L. J., M. C. 18; 2 Jur., N. S. 1146.

The prisoner, in a conversation with a woman who was pregnant, told her that he knew of something that would get rid of her child. On being asked what it was, he said it was savin. He afterwards brought the woman some savin, and gave her directions how to take it. She took the savin accordingly, and the prisoner called from time to time to inquire the effect. The prisoner also made up into pills a drug which the woman had obtained at his request. After taking the savin and the pills the woman became and continued very ill till she was confined.—Held, a causing to be taken within 7 Will. 4 & 1 Vict. c. 85, s. 6. *Reg. v. Farrow*, Dears. & B. C. C. 164; 3 Jur., N. S. 167.

Intention to Procure Abortion.—In order to constitute the offence of supplying a noxious thing, with the intention that it shall be employed in procuring abortion within 24 & 25 Vict. c. 100, s. 59, it is not necessary that the intention of employing it should exist in the mind of any other person than the person supplying it. *Reg. v. Hillman*, L. & C. 343; 9 Cox, C. C. 386; 33 L. J., M. C. 60; 9 L. T. 518; 12 W. R. 111.

Woman not Pregnant.—Supplying a noxious thing with the intent that it shall be used by a certain woman to procure abortion is a misdemeanor within the 24 & 25 Vict. c. 100, s. 59, although the woman for whom it was intended

by him was not pregnant. *Reg. v. Tittley*, 14 Cox, C. C. 502.

An indictment under 7 Will. 4 & 1 Vict. c. 85, s. 6, for using an instrument with intent to procure miscarriage:—Held, immaterial whether or not the woman was pregnant at the time of the instrument being used. *Reg. v. Goodhall or Goodchild*, 1 Den. C. C. 187; 2 C. & K. 294.

Cases under Repealed Statute of 43 Geo. 3, c. 58, s. 1.]—The expression "quick with child," in this statute meant when the woman felt the child move within her. *Goldsmith's case*, 3 Camp. 76.

Or, having conceived. *Reg. v. Wyohereley*, 8 C. & P. 262.

Or, feeling the child alive and quick within, at whatever time the fœtus might have a separate existence. *Reg. v. Phillips*, 3 Camp. 77.

To constitute the offence of administering poison or other noxious substance, under the same statute, some of the poison or noxious substance must have been taken by or applied to the woman. *Reg. v. Cadman*, 1 M. C. C. 114.

On an indictment for administering a drug to a woman to procure abortion, she not being quick with child; if it appeared that she was not with child at all, the prisoner was acquitted, although it appeared that he thought that she was with child, and gave her the drug with an intent to destroy such child. *Reg. v. Seudder*, 3 C. & P. 605; 1 M. C. C. 216. See *supra*.

Corroborative Evidence—What is.]—There being no other evidence but that of the woman that the prisoner incited her to take the excessive doses of a noxious thing, except that her father accused him of giving his daughter such things "to produce abortion," and that he did not deny it:—Held, that this was some corroborative evidence, even assuming the woman to be in the position of an accomplice requiring corroboration. *Reg. v. Cramp*, 14 Cox, C. C. 390.

D. RAPE AND ASSAULT ON WOMEN AND CHILDREN.

1. Rape.
2. Carnally Abusing Children, 521.
3. Indecent Assaults on Females, 528.
4. Proving Defilement of Girl under Twenty-one, 529.

I. RAPE.

a. Statute.

By 24 & 25 Vict. c. 100, s. 48, *whosoever shall be convicted of the crime of rape shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour.*

By s. 63, *whenever, upon the trial for any offence punishable under this act, it may be necessary to prove carnal knowledge, it shall not be necessary to prove the actual emission of seed, in order to constitute a carnal knowledge, but the carnal knowledge shall be deemed complete upon proof of penetration only. (Former provision, 9 Geo. 4, c. 31, s. 18.)*

b. Who Capable of Committing.

A boy under fourteen cannot be convicted of an assault with intent to commit a rape. *Reg. v. Eldershaw*, 3 C. & P. 366.

And if he is under that age, no evidence is admissible to shew that, in point of fact, he could commit the offence of rape. *Reg. v. Phillips*, 8 C. & P. 736; *S. P., Reg. v. Jordan*, 9 C. & P. 118.

c. Upon whom Committed.

Idiot.]—The prisoner had carnal knowledge of a girl of thirteen by force. She was incapable of giving consent from defect of understanding, and it was not shewn that the act was done against her will:—Held, that he was properly convicted of rape. *Reg. v. Fletcher*, Bell, C. C. 63; 8 Cox, C. C. 131; 28 L. J., M. C. 85; 5 Jur., N. S. 179; 7 W. R. 204.

The mere fact of connexion with an idiot girl capable of recognizing and describing the prisoner, but incapable, so far as her idiocy rendered her so, of expressing dissent or consent, and therefore without her consent, is not sufficient evidence of the commission of a rape upon her to be left to a jury. *Reg. v. Fletcher*, 1 L. R., C. C. 39; 35 L. J., M. C. 172; 12 Jur., N. S. 505; 14 L. T. 573; 14 W. R. 774; 10 Cox, C. C. 248.

Upon the trial of an indictment for rape upon an idiot girl, the proper direction to the jury is that if they are satisfied that the girl was in such a state of idiocy as to be incapable of expressing either consent or dissent, and that the prisoner had connexion with her without her consent, it is their duty to find him guilty. *Reg. v. Barratt*, 2 L. R., C. C. 81; 43 L. J., M. C. 7; 29 L. T. 409; 22 W. R. 136; 12 Cox, C. C. 498.

The cases of *Reg. v. Fletcher* (Bell, C. C. 63), and of *Reg. v. Fletcher* (1 L. R., C. C. 39) are not adverse to one another. The principle is properly laid down in the first case, and the second case was only a decision to the effect that there was not that requisite testimony of want of assent to justify leaving the case to the jury. *Id.*

Infant.]—Though a child under ten years of age cannot legally consent to a rape upon her, yet she may consent to the attempt to commit it; and such an attempt, with her consent, would not be an assault. Where, therefore, a child is too young to know the nature of an oath, her evidence as to a rape upon her cannot be taken, and marks of violence on her private parts cannot be presumed to have been done against her consent. *Reg. v. Cockburn*, 3 Cox, C. C. 543.

d. The Offence.

Consent—What is—Non-resistance owing to Mistake.]—To constitute a rape on a woman conscious and capable of giving consent at the time of connexion, there must be an actual resistance of the will. Non-resistance to connexion, permitted under a misapprehension induced by the conduct of the man, by a woman conscious and capable of consenting, amounts to consent, though unintentional, and prevents the offence amounting to a rape. *Reg. v. Barrow*, 1 L. R., C. C. 156; 38 L. J., M. C. 20; 19 L. T. 293; 17 W. R. 102; 11 Cox, C. C. 191.

A woman, with her baby in her arms, was lying in bed between sleeping and waking, and her husband was asleep beside her. She was

completely awakened by a man having connexion with her, and pushing the baby aside. Almost directly she was completely awakened she found that the man was not her husband, and awoke her husband:—Held, that a conviction for a rape upon these facts could not be sustained. *Id.*

Having carnal knowledge of a married woman, under circumstances which induced her to suppose it is her husband, does not amount to a rape. *Reg. v. Jackson*, R. & R. C. C. 47.

If a man has connexion with a woman, she consenting under the belief that it is her husband, this is not a rape, though it is a fraud on the part of the man; but it is an assault; and the fact that there was no resistance on her part makes no difference, as the fraud is sufficient to make it an assault. *Reg. v. Williams*, 8 C. & P. 286; *S. P.*, *Reg. v. Saunders*, 8 C. & P. 265.

A, got into the bed of a married woman, intending if he could to have connexion with her by passing for her husband, but not by force. She supposing him to be her husband allowed him to have connexion with her:—Held, that he was not guilty of rape. *Reg. v. Clarke*, Dears. C. C. 397; 3 C. L. R. 86; 6 Cox, C. C. 412; 24 L. J., M. C. 25; 18 Jur. 1059; *S. P.*, *Reg. v. Sweeney*, 8 Cox, C. C. 223.

To constitute rape, it is not necessary that the connexion with the woman should be had against her will; it is sufficient if it is without her consent. *Reg. v. Fletcher*, Bell, C. C. 63; 8 Cox, C. C. 131; 28 L. J., M. C. 85; 5 Jur., N. S. 179; 7 W. R. 204.

Upon an indictment for rape, there must be some evidence that the act was without the consent of the woman, even where she is an idiot. In such a case, where there were no appearances of force having been used to the woman, and the only evidence of the connexion was the prisoner's own admission, coupled with the statement that it was done with her consent:—Held, that there was no evidence for the jury. *Reg. v. Fletcher*, 1 L. R., C. C. 39; 35 L. J., M. C. 172; 12 Jur., N. S. 505; 14 L. T. 573; 14 W. R. 774; 10 Cox, C. C. 248.

The rule is, that the connexion must be without the consent of the person alleged to have been ravished. *Reg. v. Jones*, 4 L. T., 154.

Three boys, under fourteen years of age, were indicted for assaulting a girl nine years of age. It was proved that each of the boys had had connexion with her. The jury returned as their verdict, "that the prisoners were guilty, the child being an assenting party; but that from her tender years she did not know what she was about:"—Held, upon this finding, a verdict of acquittal must be entered. *Reg. v. Read*, 2 C. & K. 957; 1 Den. C. C. 377; 3 Cox, C. C. 266; T. & M. 52; 3 New Sess. Cas. 405; 19 L. J., M. C. 88; 13 Jur. 68.

Force used—Consent in some degree given.]

—If in a case of rape the jury is satisfied that non-resistance on the part of the prosecutrix proceeded merely from her being overpowered by actual force, or from her not being able, from want of strength, to resist any longer, or that, from the number of persons attacking her, she considered resistance dangerous and absolutely useless, the jury ought to convict the prisoner of the capital charge; but if they think, from the whole of the circumstances, that although, when the prosecutrix was first laid hold of, it was

against her will, yet that she did not resist afterwards, because she in some degree consented to what was afterwards done to her, they ought to acquit the prisoners of the capital charge, and convict them of an assault only. *Reg. v. Hallett*, 9 C. & P. 748.

The jury should be satisfied, not merely that the act was in some degree against the will of the woman, but that she was, by physical violence or terror, fairly overcome, and forced against her will, she resisting as much as she could, and so as to make the prisoner see and know that she was really resisting to the utmost. *Reg. v. Rudland*, 4 F. & F. 495.

Rape by Fraud.—If a man has or attempts to have connexion with a woman while she is asleep, it is no defence that she did not resist, as she is incapable of resisting. The man can, therefore, be found guilty of a rape, or of an attempt to commit a rape. *Reg. v. Mayers*, 12 Cox, C. C. 311.

While a married woman was asleep in bed with her husband, the prisoner got into the bed and proceeded to have connexion with her, she being then asleep. When she awoke, she at first thought he was her husband, but on hearing him speak, and seeing her husband at her side, she flung the prisoner off, and called out to her husband, when the prisoner ran away:—Held, he was guilty of the crime of rape. *Reg. v. Young*, 38 L. T. 540. See also cases *supra*.

Consent given through Ignorance or Surprise.]

—A man, who by fraudulently and falsely pretending to give medical advice to a female patient, and in pursuance of such advice to perform a surgical operation upon her, procures her submission to his medical treatment of her, under colour of which he has carnal connexion with her, she believing all the while that she was undergoing medical treatment, is guilty of a rape. *Reg. v. Flattery*, 2 Q. B. D. 410; 46 L. J., M. C. 130; 36 L. T. 32; 25 W. R. 398; 13 Cox, C. C. 388.

If a surgeon professing to take steps to cure a girl of a complaint has carnal connexion with her, and she is ignorant of the nature of his act, and makes no resistance, solely from a bona fide belief that he is, as he represents, treating her medically, with a view to her cure, his conduct in point of law amounts to an assault. *Reg. v. Case*, 1 Den. C. C. 580; 4 Cox, C. C. 220; T. & M. 318; 4 New Sess. Cas. 347; 19 L. J., M. C. 174; 14 Jur. 489.

On an indictment for an assault with intent to commit a rape, the prosecutrix stated, that the defendant, her medical man, being in her bedroom, directed her to lean forward on a bed, that he might apply an injection; she did so, and the injection having been applied, she found the defendant was proceeding to have a connexion with her, upon which she instantly raised herself, and ran out of the room. She stated that the defendant had penetrated her person a little:—Held, that, if it had appeared that the defendant had intended to have had connexion with the prosecutrix by force, the complete offence of rape would, upon this evidence, have been proved, but that the thus getting possession of the person of the woman by surprise, was not an assault with intent to commit a rape, but was an assault. *Reg. v. Stanton*, 1 C. & K. 415.

Making Woman Drunk.]—On a trial for a rape, it was proved that the prisoner made the prosecutrix drunk, and that when she was in a state of insensibility he took advantage of it and violated her. The jury convicted the prisoner, and found that he gave her liquor for the purpose of exciting her, and not with the intention of rendering her insensible, and then having sexual intercourse with her :—Held, that he was properly convicted of rape. *Reg. v. Camplin*, 1 C. & K. 746 ; 1 Den. C. C. 89.

Submission because of Fear.]—Where a father has established a kind of reign of terror in his family, and his daughter, under the influence of dread and terror, remains passive while he has connexion with her, he may be found guilty of rape. *Reg. v. Jones*, 4 L. T. 154.

Penetration—What sufficient.]—Since 9 Geo. 4, c. 31, s. 18, the only question for the jury is, whether the private parts of the man did or not enter into the person of the woman. Therefore, though it appears from the evidence, beyond all possibility of doubt, that the party was disturbed immediately after penetration, and before the completion of his purpose, yet he must be found guilty of having committed the complete offence of rape. *Reg. v. Allen*, 9 C. & P. 31.

The slightest penetration is sufficient, even though it does not break the hymen. *Reg. v. Russen*, 1 East, P. C. 438.

Penetration, short of rupturing the hymen, is sufficient to constitute the crime of rape. *Reg. v. Hughes*, 2 M. C. C. 190 ; 9 C. & P. 752.

Though it is not necessary, in order to complete the offence of rape, that the hymen should be ruptured, provided that it is clearly proved that there was penetration ; yet where that which is so very near to the entrance has not been ruptured, it is very difficult to come to the conclusion that there has been penetration so as to sustain the charge. *Reg. v. MRue*, 8 C. & P. 641.

To constitute penetration on a charge of this offence, the parts of the male must be inserted in those of the female ; but, as matter of law, it is not essential that the hymen should be ruptured. *Reg. v. Jordan*, 9 C. & P. 118.

Emission Unnecessary.]—Proof of injectio seminis, as well as penetration, was essential in an indictment for rape, before 9 Geo. 4, c. 31. *Rea v. Hill*, 1 East, P. C. 439 ; *S. P.*, *Rea v. Cave*, 1 East, P. C. 438 ; *Rea v. Burrows*, R. & R. C. C. 519 ; *Rea v. Cozins*, 6 C. & P. 351.

Since 9 Geo. 4, c. 31, the offence of rape is made out by proof of penetration only ; and in such case a prisoner must be found guilty, although there was no emission, and although he did not withdraw himself merely because he was satisfied. *Rea v. Jennings*, 4 C. & P. 249 ; 1 Lewin, C. C. 93 ; *S. P.*, *Rea v. Recksepear*, 1 M. C. C. 342. And see 24 & 25 Vict. c. 100, s. 63, *supra*.

Attempt to Commit.]—In order to convict on a charge of assault with intent to commit a rape, the jury must be satisfied not only that the prisoner intended to gratify his passions on the person of the prosecutrix, but that he intended to do so at all events, and notwithstanding any resistance on her part. *Rea v. Lloyd*, 7 C. & P. 318.

e. Indictment.

Form and Evidence of.]—An indictment need not contain an express allegation of an assault. *Reg. v. Allen*, 2 M. C. C. 179 ; 9 C. & P. 521.

A. was convicted on an indictment, which charged that he "in and upon E. F.," "feloniously and violently did make (omitting the words 'an assault,')" and her, then and there, and against her will, violently and feloniously did ravish and carnally know :—Held, that the omission of the words "an assault," was no ground for arresting the judgment. *Ib.*

After an acquittal upon an indictment for rape, and for an assault with intent to commit a rape, the prisoner may be indicted for a common assault, upon which the prosecutrix can only in chief be asked so much as to elicit what would amount to a common assault ; but the prisoner's counsel may, on cross-examination, enter into the original charge. *Reg. v. Dungey*, 4 F. & F. 99.

On an indictment charging a misdemeanor for an assault in attempting to commit a rape on A. B., with a count for an assault of the same nature on a different day on C. D., it is competent to the prosecutor, not only in law, but by ordinary practice, to give evidence of both assaults. *Reg. v. Davies*, 5 Cox, C. C. 328.

What Parties Indictable.]—A count charging A. with a rape as a principal in the first degree, and B. as a principal in the second degree, may be joined with another count, charging B. as principal in the first degree, and A. as principal in the second degree. *Rea v. Gray*, 7 C. & P. 164.

A general conviction of a prisoner charged both as principal in the first degree, and as an aider and abettor of other men in rape, is valid on the count charging him as principal. *Rea v. Folkes*, 1 M. C. C. 354.

An indictment is good which charges that A. committed a rape, and that B. was present, aiding and assisting him in the commission of the felony. *Reg. v. Crisham*, Car. & M. 187.

In such a case the party aiding may be charged either, as he was in law, a principal in the first degree, or as he was in fact, a principal in the second degree. *Ib.*

f. Trial.

Election.]—On an indictment for rape charging the prisoner both as principal in the first degree, and as an aider and an abettor of other men in the rape, evidence may be given of several rapes on the same woman, at the same time, by the prisoner and other men, each assisting the other in turn, without putting the prosecutrix to elect on which count to proceed. *Rea v. Folkes*, 1 M. C. C. 354.

Finding of Jury, on what Counts—Applying.]—A first count charged an assault with intent to ravish ; the second, a common assault. The record went on to state, that the jury found the defendant guilty of the misdemeanor and offence in the indictment specified, in manner and form as by the indictment is alleged against him, and the judgment was, imprisonment and hard labour :—Held, that the word "misdemeanor" was nomen collectivum, and that the finding of the jury was in effect, that the defendant was guilty of the whole matter charged, and that the judg-

ment was therefore warranted by the verdict. *Rex v. Powell*, 2 B. & Ad. 75.

Verdict—Attempt to Commit.]—By 14 & 15 Vict. c. 100, s. 9, upon an indictment for a rape a prisoner may be convicted of an attempt to commit the same, and will be liable to the same consequences as if charged and convicted of the attempt.

An indictment charged H. with rape, and W. with aiding and abetting in the rape. The jury found H. and W. guilty of misdemeanor; H. of attempting to commit a rape, and W. of aiding H. in the attempt. It was contended that this verdict amounted to an acquittal of W., as the case did not fall within 14 & 15 Vict. c. 100, s. 9, by which a person indicted for a crime may be found guilty of an attempt to commit the crime. The objection was overruled:—Held, that the conviction ought to be affirmed. *Reg. v. Haggood*, 1 L. R., C. C. 221; 39 L. J., M. C. 82; 21 L. T. 678; 18 W. R. 356.

— Assault—Evidence of Rape.]—Before 14 & 15 Vict. c. 100, s. 12, a defendant would be acquitted on an indictment for an assault with intent to ravish, if the evidence amounted to proof of an actual rape. *Rex v. Harmwood*, 1 East, P. C. 411.

g. Evidence.

Sufficiency—No Corroboration of Prosecutrix.]

—A prisoner may be convicted of rape upon the unsupported evidence of an infant under years of discretion, if the jury is satisfied that the evidence is such as to leave no reasonable doubt of his guilt. *Anon.*, 1 Russ. C. & M. 932.

Admissibility of Complaints made in Prisoner's Absence.]—The particulars of the complaint made by a female on whom a rape has been committed are not receivable in evidence, nor even her statement as to the place of the commission of the crime: all that can be asked on examination in chief being the fact of her having made such complaint, and the nature of it. *Reg. v. Mercer*, 6 Jur. 243.

On the trial of an indictment for a rape, it appeared that the person alleged to have been ravished, but who was since dead, had come home evidently suffering from recent violence; it was proved, that on her return home she made a statement as to the injury she had received, and named the persons who had committed it:—Held, that the particulars of this statement could not be given in evidence as independent evidence, to shew who were the persons who committed the offence; and that statements of this kind were only admissible to confirm the evidence of the prosecutrix, by shewing that she made a recent complaint of the injury she had received. *Reg. v. Megson*, 9 C. & P. 420.

Where the deposition of the prosecutrix taken before the magistrate was not proved, and she was not at the trial, evidence of complaints made by her recently after the outrage was rejected; no such evidence is receivable as confirmatory evidence only. *Reg. v. Guttridge*, 9 C. & P. 471.

A person to whom the prosecutrix made a complaint very recently after the offence, as she was on her way home, may be asked whether she

named a person as having committed the offence, but not whose name she mentioned. *Reg. v. Osborne*, Car. & M. 622.

The fact of the prosecutrix making complaint of the outrage, and the state in which she was at the time of making the complaint, are evidence. *Reg. v. Clarke*, 2 Stark. 241.

On a trial for rape, or for an attempt to commit a rape, the female assaulted may be confirmed by proof that she recently, after the alleged outrage, made a complaint, but the particulars of what she said cannot be asked in chief of the confirming witness, but may in cross-examination. *Reg. v. Walker*, 2 M. & Rob. 212.

Not only what the prosecutrix said immediately after the occasion, but what was said in answer to her, is evidence. *Reg. v. Eyre*, 2 F. & F. 579.

Where a man is charged with committing a rape, the full particulars of the complaint the woman made against him to other persons in his absence some time after the alleged offence may be given in evidence. *Reg. v. Wood*, 14 Cox, C. C. 46.

— Duty of Prosecution.]—On a trial for a rape, the prosecutrix, a servant, stated that she made almost immediate complaint to her mistress, and that on the next day a washerwoman washed her clothes, on which was blood. Neither the mistress nor the washerwoman was under recognizances to give evidence, nor were their names on the back of the indictment, but they were at the assizes attending as witnesses for the prisoner. The judge directed that both the mistress and the washerwoman should be called by the counsel for the prosecution, but allowed the counsel for the prosecution every latitude in their examination. *Reg. v. Stroner*, 1 C. & K. 650.

To Impeach Character of the Prosecutrix.]

—On the trial of an indictment for a rape, the prosecutrix may be asked whether, previously to the commission of the alleged offence, the prisoner had not had intercourse with her by her own consent. *Rex v. Martin*, 6 C. & P. 562.

Under an indictment for an assault to commit a rape, the defendant may impeach the prosecutrix's character for chastity by general, but not by particular, evidence. *Rex v. Clarke*, 2 Stark. 241.

But the character of the prosecutrix as to general chastity may be impeached by general evidence. *Id.*

The prisoner may give evidence that the woman bore a notoriously bad character for want of chastity and common decency, or that she had before been criminally connected with the prisoner; but he cannot shew that she had a criminal connexion with other persons. *Rex v. Hodgson*, R. & R. C. C. 211.

Nor is the woman obliged to answer as to the latter fact. *Id.*

On the trial of an indictment for a rape, held, that the prisoner's counsel might ask the prosecutrix the following questions, with a view to contradict her: "Were you not, on —, (since the time of the alleged offence,) walking in the High-street at Oxford to look out for men?" "Were you not, on —, (since the time of the alleged offence,) walking in the High-street

with a woman reported to be a common prostitute?" *Rea v. Barker*, 3 C. & P. 589.

Held, also, that evidence might be adduced by the prisoner to shew the general light character of the prosecutrix, and that general evidence might be given of her being a street-walker. *Ib.*

The prosecutrix may be asked, on cross-examination, whether she had not allowed another man than the prisoner to take liberties with her, in the interval between the commission of the alleged offence and the first complaint of it. *Reg. v. Mercer*, 6 Jur. 243.

On a trial for rape, evidence of the general character of the prosecutrix, as that she had been a reputed prostitute, is admissible. *Reg. v. Clay*, 5 Cox, C. C. 146.

Contradiction of the Prosecutrix.]—A prosecutrix, on a charge of rape, having, on cross-examination, said that she had herself been charged with stealing money, and on that occasion had accounted to a police constable for the possession of the money by stating that it was given her for not complaining of a person who had insulted her by solicitations against her chastity, but denied that she had said the money was given her for having connexion with him:—Held, that the prisoner could not call the constable as a witness, to contradict the prosecutrix, by proving that she had said that the money was given her for that purpose. *Reg. v. Dean*, 6 Cox, C. C. 23.

If upon the trial of an indictment for rape, attempt to rape, or indecent assault, the prosecutrix is asked whether previously to the alleged offence she has had connexion with a particular person named; her answer is final, and evidence cannot be adduced to contradict her if she replies in the negative. *Reg. v. Holmes*, 1 L. R., C. C. 334; 41 L. J., M. C. 12; 25 L. T. 669; 20 W. R. 122; 12 Cox, C. C. 137.

But the prosecutrix having, on cross-examination, denied that she had connexion with other men than the prisoner, those men may be called to contradict her. *Reg. v. Robins*, 2 M. & Rob. 512.

Proof of Other Cases.]—On an indictment for rape on a child under ten, evidence was admitted of subsequent perpetrations of the same offence on different days previously to complaint to the mother, it appearing that the prisoner had threatened the child on the first occasion:—Held, that, virtually, it was in such a case all one continuous offence. *Reg. v. Rearden*, 4 F. & F. 76.

On an indictment for an assault with intent to commit a rape, evidence that the prisoner on a prior occasion had taken liberties with the prosecutrix, is not receivable to shew the prisoner's intent. *Rea v. Lloyd*, 7 C. & P. 318.

Proof of Age.]—Family discussion as to birth-day, and acts done on the reputed day, are evidence for the jury as to the age of an infant prosecutrix, on whom a rape is charged to have been committed. *Reg. v. Hayes*, 2 Cox, C. C. 226.

Identity of Accused.]—In a case of rape against five, the prosecutrix, when before the grand jury, did not know the names of the different prisoners, but could identify the persons:—Held, that the grand jury might call in another

witness, who was before the examining magistrate, and there saw the prisoners, and let the prosecutrix describe the different prisoners, and the other witness give their names; and that, if the prisoners could not be identified by this mode, they might be brought before the grand jury. *Reg. v. Jenkins*, 1 C. & K. 536.

Depositions of Prosecutrix—When Admissible.]—If it is proved on the part of the prosecution that the party alleged to have been ravished has been kept out of the way by the prisoners, the judge will allow her deposition before the magistrate to be given in evidence. *Reg. v. Guttridge*, 9 C. & P. 471.

In an indictment for a rape, the deposition of a girl taken before the committing magistrate, and signed by him, may, after her death, be read in evidence at the trial of the prisoner, although it was not signed by her, and she was under twelve years of age, provided she was sworn, and appeared competent to take an oath; and all the facts necessary to complete the crime may be collected from her testimony so given in evidence. *Rea v. Flemming*, 2 Leach, C. C. 854; 1 East, P. C. 440.

It appeared that the prisoner had been taken before the mayor of N., charged with rape; and that the prosecutrix was sworn, and her statement taken down by the mayor, who asked her some further questions, the answers to which were taken down, and the prisoner was discharged. That which was taken down by the mayor was not read over to the prosecutrix, neither was it signed by her or by the mayor. The prisoner was afterwards committed for trial by other magistrates:—Held, that at the trial the prisoner's counsel might cross-examine the prosecutrix as to what she said before the mayor of N., without the production of that which was taken down on that examination. *Reg. v. Griffiths*, 9 C. & P. 746.

On her cross-examination a prosecutrix cannot be contradicted from the depositions unless they are put in. *Reg. v. Wright*, 4 F. & F. 967.

Sufficiency of Confession.]—The prisoner was convicted of a rape upon the prosecutrix, who was an apparent idiot. She proved the act done, and said that it was wrong, but that she said nothing to the prisoner, and that she did not do anything to him, and that she did not like to hurt nobody. The constable told the prisoner that he was charged with committing a rape upon the prosecutrix and against her will. The prisoner, in answer to that, said, "Yes, I did; and I'm very sorry for it:—Held, that there was evidence to sustain the conviction. *Reg. v. Pressy*, 10 Cox, C. C. 635; 17 L. T. 295; 16 W. R. 142.

Proof of Attempt to Rape.]—On a charge of rape, there having been to some extent assent, and it being doubtful whether the act had been completed, it is necessary that the jury should be satisfied, before convicting either of a rape or of an assault with intent to commit a rape, that the prisoner intended to commit the offence notwithstanding any resistance on the part of the woman. *Reg. v. Wright*, 4 F. & F. 967.

2. CARNALLY ABUSING CHILDREN.

Girls under Twelve Years.]—By 38 & 39 Vict. c. 94 (The Offences against the Person Act, 1875),

s. 3, *whosoever shall unlawfully and carnally know and abuse any girl under the age of twelve years shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labour.*

Abusing Girls above Twelve Years and under Thirteen Years.—By s. 4, *whosoever shall unlawfully and carnally know and abuse any girl being above the age of twelve years, and under the age of thirteen years, whether with or without her consent, shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour.*

Consent of Girl under Thirteen.—By 43 & 44 Vict. c. 45 (Criminal Law Amendment Act, 1880), s. 2, *It shall be no defence to a charge or indictment for an indecent assault on a young person under the age of thirteen to prove that he or she consented to the act of indecency.*

Who Capable of Committing.—A boy under fourteen cannot, by law, be convicted of feloniously carnally knowing and abusing a girl under ten, even though it was proved that he had arrived at the full state of puberty. *Reg. v. Jordan*, 9 C. & P. 118.

Above Statutes do not Repeal old Law of Rape.—The statute 38 & 39 Vict. c. 94, s. 4, which enacts that "*whosoever shall unlawfully and carnally know and abuse any girl being above the age of twelve years and under the age of thirteen years, whether with or without her consent, shall be guilty of a misdemeanor,*" &c., does not operate to prevent a conviction for felony, under 24 & 25 Vict. c. 100, s. 48, of a person committing a rape upon a girl between those ages. *Reg. v. Dieken* (14 Cox, C. C. 8) followed. *Reg. v. Ratcliffe*, 10 Q. B. D. 74; 52 L. J., M. C. 40; 47 L. T. 388; 15 Cox, C. C. 127.

An indictment for the felony of rape still lies against one who ravishes a female between the age of twelve and thirteen, notwithstanding the provisions of the 38 & 39 Vict. c. 94, s. 4. *Reg. v. Dieken*, 14 Cox, C. C. 8.

Penetration.—If, on the trial of an indictment for carnally knowing and abusing a female child under ten, the jury is satisfied that, at any time, any part of the virile member of the prisoner was within the labia of the pudenda, no matter how little, this is sufficient to constitute a penetration, and the jury ought to convict. *Reg. v. Lines*, 1 C. & K. 393.

Effect of Consent of Girl.—Attempting to carnally know and abuse a girl between the ages of ten and twelve is not an assault, if the girl consents to all that is done, but is a misdemeanor. *Reg. v. Martin*, 9 C. & P. 213; 2 M. C. C. 123. See now 43 & 44 Vict. c. 45, *supra*.

The person making such attempt, with the consent of the girl, is not indictable for an assault, but is indictable for the misdemeanor of attempting to commit the misdemeanor of carnally knowing and abusing her. *Id.*

An indecent assault committed upon a girl

between the age of ten and twelve, with her consent, is not indictable. *Reg. v. Johnson*, L. & C. 632; 10 Cox, C. C. 114; 34 L. J., M. C. 192; 11 Jur., N. S. 532; 12 L. T. 503; 13 W. R. 815.

But on an indictment for attempting to have carnal knowledge of a girl under ten years, being a misdemeanor, consent by the girl is no defence and is immaterial. *Reg. v. Beale*, 1 L. R., C. C. 10; 35 L. J., M. C. 60; 12 Jur., N. S. 12; 13 L. T. 335; 14 W. R. 57; 10 Cox, C. C. 157.

A prisoner was indicted at quarter sessions for an indecent assault on a girl seven years of age. The chairman refused to allow the prisoner's counsel to address the jury on the question of the girl's consent to the prisoner's act, ruling that a child of seven years old might submit, but was incapable of giving consent in such a case:—Held, that such ruling was wrong. *Reg. v. Roadley*, 14 Cox, C. C. 463; 49 L. J., M. C. 88; 42 L. T. 515.

Consent through Terror.—On an indictment for attempting to carnally know and abuse a girl under ten, with a count for a common assault, the attempt was proved, but it could not be shewn that the child was under ten years of age, and it also appeared that no violence was used by the prisoner, and no actual resistance made by the girl:—Held, that although consent on the part of the girl would put an end to the charge of assault, yet that there was a great difference between consent and submission, and that, although, in the case of an adult, submitting quietly to an outrage of this kind would go far to shew consent, yet that, in the case of a child, the jury should consider whether the submission of the child was voluntary on her part, or was the result of fear under the circumstances in which she was placed. *Reg. v. Day*, 9 C. & P. 722.

On an indictment for the carnal knowledge of a girl above ten years of age, and under twelve, and also for an assault:—Held, on the latter count, that although consent would be a defence, consent extorted by terror, or induced by the influence of a person in whose power she feels herself, is not really such consent as will have that effect. *Reg. v. Woodhurst*, 12 Cox, C. C. 443.

Effect of Fraud.—An assault is within the rule that fraud vitiates consent, and therefore when a man, knowing that he had a foul disease, induced a girl of thirteen, who was ignorant of his condition, to consent to sleep with him, and he infected her:—Held, that he might be convicted of an indecent assault. *Reg. v. Bennett*, 4 F. & F. 1105.

Effect by Force.—If, on the trial of an indictment for a misdemeanor in carnally knowing and abusing a girl between the age of ten and twelve, it appears that the prisoner effected his purpose by force, and against the girl's will, this is no ground of acquittal. *Reg. v. Neale*, 1 C. & K. 591; 1 Den. C. C. 36.

Indictment.—An indictment in the first count charged the defendant with having assaulted "E. R., an infant above the age of ten and under the age of twelve," with intent to carnally know and abuse her; and in the second count charged that the defendant "unlawfully did put and place the private parts of him, the said T. M., against the private parts of her, the said E.

R., and did thereby then and there unlawfully attempt and endeavour to carnally know and abuse the said E. R. :—Held, that the second count was bad, as it did not allege that E. R. was between the ages of ten and twelve. *Reg. v. Martin*, 9 C. & P. 215.

Held, also, that the words "the said E. R." merely meant that she was the same person as was mentioned in the first count, but that those words did not import into the second count the description of E. R. with respect to her age. *Id.* A count in an indictment charging that a defendant did attempt to assault a girl by solliciting and inducing her to place herself in an indecent attitude, he doing the like, is bad. *Reg. v. Butler*, 6 C. & P. 638.

An indictment (whether for the felony or for an attempt to commit it), founded on 24 & 25 Viet. c. 100, s. 50, which makes it a felony to "carnally know and abuse any girl under the age of ten years," is sufficient if it uses the words "carnally know" only, and omits the word "abuse." *Reg. v. Holland*, 10 Cox, C. C. 478; 16 L. T. 536; 15 W. R. 879.

— **Girl under Ten.**—A prisoner was indicted for the misdemeanor of carnally knowing a girl between the age of ten and twelve. The case was proved, but the girl was under ten :—Held, that he must be acquitted, and that the 14 & 15 Viet. c. 100, s. 12, did not apply. *Reg. v. Shott*, 3 C. & K. 206.

Trial—When Jury may find Assault or Attempt to Commit.—An indictment contained one count, charging that the prisoner in and upon a girl between the ages of ten and twelve "unlawfully did make an assault and her did then unlawfully and carnally know and abuse against the form of the statute." The offence of carnally knowing and abusing was disproved, but there was evidence of an indecent assault, which was left to the jury, who found the prisoner guilty of a common assault :—Held, that the indictment charged an assault as a distinct and separable offence, and that the conviction was good. *Reg. v. Guthrie*, 1 L. R., C. C. 241; 39 L. J., M. C. 95; 22 L. T. 485; 18 W. R. 792.

When a man is indicted under 38 & 39 Viet. c. 94, s. 3, for rape upon a child under twelve years of age, he cannot upon that indictment be found guilty of an assault, indecent or otherwise. *Reg. v. Cuthrell*, 13 Cox, C. C. 109.

On an indictment for carnally knowing and abusing a girl under ten, the prisoner may be acquitted of the felony, and convicted of an assault. *Reg. v. Folkes*, 2 M. & Rob. 460.

Under an indictment for unlawfully assaulting and having carnal knowledge of a girl between ten and twelve years of age, the prisoner may be convicted of the attempt to commit that offence. *Reg. v. Ryland*, 11 Cox, C. C. 101; 18 L. T. 538; 16 W. R. 941.

Where an indictment charged the defendant with an assault and an intent to abuse and carnally know a female child :—Held, that he might be convicted of an assault to abuse her simply, as the averment of such intention is divisible. *Reg. v. Dawson*, 3 Stark. 62.

On an indictment for an assault, &c., if penetration is proved, the prisoner cannot be convicted of the attempt. *Reg. v. Nicholls*, 2 Cox, C. C. 182.

Evidence—When Infant an Admissible Witness.—In cases of carnal knowledge of children, the infant witness, though under seven years of age, if apprised of the nature of an oath, must be sworn. *Reg. v. Brasier*, 1 Leach, C. C. 199; 1 East, P. C. 443.

— **Postponement of Trial.**—In a case of carnally knowing and abusing a girl under ten years old, it appeared, on an application on the part of the prosecution to postpone the trial, that the girl was only six years old, and, by reason of her age, quite incompetent to take an oath :—Held, that the trial ought not to be postponed in order that the child might be instructed as to the nature of an oath; but that there might be cases of children of more matured intellect, e.g. of ten or twelve years old, who might be from neglected education incapable of being sworn, in which such a postponement might be proper. *Reg. v. Nicholas*, 2 C. & K. 246. *S. P.*, *Reg. v. Williams*, 7 C. & P. 320.

— **Statement of Child when Prisoner absent.**—Where in such a case the child, from her tender age, was incompetent to be sworn, the judge would not receive evidence of what the child stated to her mother shortly after the alleged offence took place, nor allow the mother to prove that the child mentioned to her the name of any particular person. *Id.*

— **Of Age of Girl.**—A prisoner was charged with carnally abusing a child under ten, on February 5, 1832. To prove the child under ten years, an examined copy of the register of her baptism on February 9, 1822, was put in, and her father stated, that he left his house about a week before the 9th of February, 1822, his wife not being then confined; and that on his return on that day he found this child, and was told by his wife's mother that it had been born on the day before :—Held, that this was not sufficient evidence of the child's being under ten years. *Reg. v. Wedge*, 5 C. & P. 298.

A mother stated that a child was ten years old last March, but on cross-examination her evidence as to the knowledge of her children's ages seemed by no means clear. The evidence, though objected to as too unsatisfactory to leave to the jury on a charge of carnally knowing and abusing a girl under the age of twelve, was submitted to the jury, who found that the girl was under twelve, and convicted the prisoner of the charge :—Held, that the conviction must be affirmed. *Reg. v. Nicholls*, 10 Cox, C. C. 476; 16 L. T. 466; 15 W. R. 795.

3. INDECENT ASSAULTS ON FEMALES.

Statute.—By 24 & 25 Viet. c. 100, s. 52, *whosoever shall be convicted of any indecent assault upon any female, or of any attempt to have carnal knowledge of any girl under twelve years of age, shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour.*

What is.—A schoolmaster, who places his hands indecently on the person of a female pupil, is guilty of an indecent assault, although the pupil is thirteen years of age, and does not make any actual resistance. *Reg. v. McGarran*, 6 Cox, C. C. 64.

Evidence—Admissibility.]—Letters relating to the charge written by one of the scholars who is examined as a witness for the prosecution, may, on her denial of the handwriting, be proved and given in evidence on the part of the defendant for the purpose of affecting the witness's credit, and shewing the capacity of the scholars to conspire to make a false charge against him, although the prosecutrix is not proved to have received the letters, or had any knowledge of their contents. *Ib.*

Contradicting Prosecutrix.]—A prosecutrix of an indictment for an indecent assault, on which the facts alleged amounted, in substance, to an attempt at rape, was asked in cross-examination whether she had not previously had connexion with a man other than the prisoner, and denied it:—Held, that she could not be contradicted. *Reg. v. Holmes*, 1 L. R., C. C. 334; 41 L. J., M. C. 12; 25 L. T. 669; 20 W. R. 122; 12 Cox, C. C. 137. *And see cases ante*, col. 523.

4. PROCURING DEFILEMENT OF GIRL UNDER TWENTY-ONE.

Statute.]—By 24 & 25 Vict. c. 100, s. 49, *whosoever shall, by false pretences, false representations or other fraudulent means, procure any woman or girl under the age of twenty-one years to have illicit carnal connexion with any man, shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour.* (Similar to 12 & 13 Vict. c. 76, *Bishop of Oxford's Act* (S. Wilberforce), repealed by 24 & 25 Vict. c. 95.)

At Common Law.]—A conspiracy to procure by false pretences, false representations and other fraudulent means, a young girl to have illicit carnal connexion with a man, is a misdemeanor at common law. *Reg. v. Mears*, 2 Den. C. C. 79; 20 L. J., M. C. 59.

XXVII. OBSCENITY AND INDECENCY.

1. OBSCENE PRINTS AND PICTURES.

20 & 21 Vict. c. 83, *provides additional powers for the suppression of the trade in obscene books, prints and pictures.*

Procuring with Intent to Publish.]—It is a misdemeanor to procure indecent prints with intent to publish them. *Dugdale v. Reg. (in error)*, 1 El. & Bl. 425; *Dears*, C. C. 64; 22 L. J., M. C. 50; 17 Jur. 546.

But to preserve and keep them in possession with such intent, is not. *Ib.*

What is sufficient Publication.]—The sale of an obscene print to a person in private, he having in the first instance requested that such prints should be shewn to him, his object being to prosecute the seller, is a sufficient publication to sustain the charge. *Reg. v. Carbone*, 1 Cox, C. C. 229.

Report of Trial.]—One Mackey was indicted for selling a new edition of a book which was still obscene, though some of the most offensive

passages had been omitted. At the trial this book was not read, but was taken as read. S. published a substantially correct report of Mackey's trial, in which, however, he set out the whole of the new edition of the book:—Held, that the publication of the report, setting out the new edition of the book, was a misdemeanor, that the obvious consequence of it would be to corrupt the public morals, and that S., however pure his motives, must be taken to have intended the consequences of his act. *Steel v. Brannan*, 7 L. R., C. P. 261; 41 L. J., M. C. 85; 26 L. T. 509; 20 W. R. 607.

Held, also, that the report was not privileged as being a fair report of a trial in a court of competent jurisdiction. *Ib.*

Held, also, that copies of the report were rightly ordered to be destroyed under 20 & 21 Vict. c. 83, s. 1. *Ib.*

Destruction of Books.]—An order made for the destruction of books under Lord Campbell's Act, 20 & 21 Vict. c. 83, s. 1, must state that the magistrate making it is satisfied, not only that the books are obscene, but also that their publication would amount to a misdemeanor proper to be prosecuted. *Bradlaugh, Ex parte*, 3 Q. B. D. 509; 47 L. J., M. C. 105; 38 L. T. 680; 26 W. R. 758. *And see preceding case.*

Seizure of Books.]—Copies of a pamphlet of an obscene nature were seized under 20 & 21 Vict. c. 83. The publisher did not keep or sell the pamphlet for the sake of gain, nor to prejudice good morals, but for a purpose which he considered to be good:—Held, that the object of the publisher did not alter the character of his act, the natural consequence of which he must be taken to have intended, and the natural consequence being one which would make the publication of the pamphlet a misdemeanor, and in the opinion of the justices who ordered the seizure proper to be prosecuted as such, the seizure was right. *Reg. v. Hicklin*, 3 L. R., Q. B. 360; 37 L. J., M. C. 89; 16 W. R. 801; 11 Cox, C. C. 19; *S. C.*, nom. *Reg. v. Wolverhampton (Recorder)*, 18 L. T. 395.

Abatement of Proceeding by Death of Complainant.]—Complaint having been duly made under 20 & 21 Vict. c. 83, that obscene books were kept by the defendant in his shop for sale, a warrant for the seizure of such books was issued, and after they had been seized the defendant was summoned to shew cause why they should not be destroyed. Upon the hearing of the summons an order was made for the destruction of the books. After the issuing of the summons, but before the hearing, the complainant died, and no application to substitute another complainant was made:—Held, that the proceedings against the defendant did not lapse upon the death of the complainant, and that the order was valid. *Reg. v. Truelove*, 5 Q. B. D. 336; 49 L. J., M. C. 57; 42 L. T. 250; 28 W. R. 413; 44 J. P. 346; 14 Cox, C. C. 408.

Indictment.]—In an indictment for publishing an obscene book, it is not sufficient to describe the book by its title only, for the words alleged to be obscene must be set out; and if they are omitted, the defect will not be cured by a verdict of guilty, and the indictment will be bad either upon arrest of judgment or upon error.

Bradlaugh v. Reg., 3 Q. B. D. 607; 38 L. T. 118; 26 W. R. 410—C. A. Reversing 2 Q. B. D. 569; 46 L. J., M. C. 286.

Evidence.—If on the trial of an indictment for publishing an obscene snuff-box, a witness proves that the defendant exhibited to him the box produced on the trial, or a box exactly similar, this is not sufficient, if the witness cannot identify the very box exhibited to him. *Reg. v. Rosenstein*, 2 C. & P. 414.

2. INDECENT EXPOSURE.

Public Place—What is.—A party was indicted for an indecent exposure in an omnibus, several passengers being therein. The indictment contained two counts; one laid the offence as having been committed in an omnibus, and the other in a public highway:—Held, that an omnibus was sufficiently a public place to sustain this indictment. *Reg. v. Holmes, Dears.* C. C. 207; 3 C. & K. 360; 6 Cox, C. C. 216; 22 L. J., M. C. 122; 17 Jur. 562.

— **Seen only by one Person.**—An indecent exposure in a place of public resort, if actually seen only by one person, no other person being in a position to see it, is not a common nuisance. *Reg. v. Webb*, 1 Den. C. C. 338; 3 Cox, C. C. 183; T. & M. 23; 2 C. & K. 933; 18 L. J., M. C. 39; 13 Jur. 42. *S. P., Reg. v. Watson*, 2 Cox, C. C. 376.

An indecent exposure seen by one person only, and capable of being seen by one person only, is not an offence at common law. Secus, if there are other persons in such a situation as that they may be witnesses of the exposure. *Reg. v. Farrell*, 9 Cox, C. C. 446.

The prisoners committed fornication in open day, on a common, in the sight of one witness only, but so that any one passing over the common or along a public footway adjacent could have seen them. There was no proof that any persons were passing over the common or along the footway at the time. Quære, whether this was an indictable offence. *Reg. v. Elliot, L. & C.* 103.

— **Whether Urinal is.**—The prisoners were convicted of indecently exposing their persons in a urinal, open to the public, which stood on a public footpath in Hyde Park, and the entrance to which was from the footpath:—Held, that the jury might well find the urinal to be a public place, and that, therefore, the conviction was good. *Reg. v. Harris*, 1 L. R., C. C. 282; 40 L. J., M. C. 67; 24 L. T. 74; 19 W. R. 360; 11 Cox, C. C. 659.

An indictment charged two defendants with indecent exposure of their persons in an open and public place:—Held, that an urinal with boxes or divisions for the convenience of the public, and situated in an open market, was not a public place within the meaning of the allegation. *Reg. v. Orchard*, 3 Cox, C. C. 248.

— **Not in place open to Public, but where Public can See.**—In order to render a person liable to an indictment for indecently exposing his person in a public place, it is not necessary that the exposure should be made in a place open to the public. If the act is done where

a great number of persons may be offended by it, and several see it, it is sufficient. *Reg. v. Thallman*, 9 Cox, C. C. 338; L. & C. 326; 33 L. J., M. C. 58; 9 L. T. 425; 12 W. R. 88.

Where a man exposed himself indecently on a roof at the back of a house in London, so as to be visible to persons in the back premises of many other houses, but not so as to be capable of being seen from any place open to the public, and seven persons in one house saw the exposure, the conviction was held good. *Ib.*

A person is indictable for a common nuisance by indecently exposing his person in a public place, though the exposure is made in a place not open to the public, if the act is done where a great number of persons may be offended by it, and several see it. *Reg. v. Mallam*, 33 L. J., M. C. 58.

It is unlawful for men to bathe, without any screen or covering, so near a public footway frequented by females that exposure of their persons must necessarily occur, and persons who so bathe are liable to an indictment for indecency. *Reg. v. Reed*, 11 Cox, C. C. 689.

— **Evidence of Usage.**—It is no defence to such an indictment that there has been, as long as living memory extends, a usage to bathe at the place, and that there has been no exposure beyond what is necessarily incident to bathing. *Ib.*

Bathing in the sea on the beach near inhabited houses, from which the person may be distinctly seen, is an indictable offence, although the houses may have been recently erected, and till then it may have been usual for men to bathe in great numbers at the place in question. *Reg. v. Crunden*, 2 Camp. 89.

— **Indecent Exhibition.**—An obscene exhibition in a booth on a racecourse with closed doors, to a number of spectators who have paid for their admission upon the invitation of the keepers of the booth to the general public, is a misdemeanor at common law. *Reg. v. Saunders*, 1 Q. B. D. 15; 45 L. J., M. C. 11; 33 L. T. 677; 24 W. R. 348; 13 Cox, C. C. 116.

A herbalist, who publicly exposes and exhibits in his shop, on a highway, a picture of a man naked to his waist and covered with eruptive sores, so as to constitute an exhibition offensive and disgusting, is guilty of a nuisance, although there is nothing immoral or indecent in the picture and his motive was innocent. *Reg. v. Grey*, 4 F. & F. 73.

Indictment.—An averment in an indictment, “in the sight and view of B.,” does not mean that B. actually saw it, but only that he might have seen it had he chanced to look. *Reg. v. Webb*, 1 Den., C. C. 338; 3 Cox, C. C. 183; T. & M. 23; 2 C. & K. 933; 18 L. J., M. C. 39; 13 Jur. 42.

An indictment for this offence, which does not conclude ad commune nocumentum, is aided by 14 & 15 Vict. c. 100, s. 25. *Reg. v. Holmes, Dears.* C. C. 207; 3 C. & K. 360; 6 Cox, C. C. 216; 22 L. J., M. C. 122; 17 Jur. 562.

An indictment for indecent exposure, charging the offence to have been committed on a highway, is not sustained by evidence that the offence was committed in a place near the highway, though in full view of it. *Reg. v. Farrell*, 9 Cox, C. C. 446.

An indictment alleging that A. "in a certain open and public place did lay his hands on the person and private parts of B. with intent to stir up in his own and B.'s mind unnatural and sodomitical desires and inclinations, and to incite B. to the committing and perpetrating with A. divers unnatural and sodomitical acts, and that B. in the said open and public place, did permit and suffer A. to lay his hands, &c., with the like intent," is bad, as not stating any offence with legal certainty. *Reg. v. Orchard*, 3 Cox, C. C. 248.

Trial—View of Jury after Summing up.]—Upon the trial of an indictment for an indecent exposure in a urinal, the quarter sessions may allow the jury to have a view of the locus in quo after summing up the case to the jury. *Reg. v. Martin*, 1 L. R., C. C. 378; 41 L. J., M. C. 113; 26 L. T. 778; 20 W. R. 1016; 12 Cox, C. C. 204.

But, it is indiscreet to allow the witnesses to accompany the jury in the absence of the accused, or his advocate, or the judge. *1b.*

Costs of Prosecution.]—An indictment for an indecent exposure of the person before one J. S., with the intent to provoke him to commit an unnatural crime, which had been removed by the defendant by certiorari, is not within s. 23 of 7 Geo. 4, c. 64, so as to enable the court before whom it is tried to grant the costs of the prosecution. *Reg. v. —*, 3 N. & P. 627; 8 A. & E. 589.

XXVIII. PERJURY, FALSE OATHS, AND FALSE DECLARATIONS.

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1. PERJURY.

a. The Offence.

i. General Principles.

What Requisite to Found Indictment.]—To found an indictment for perjury, the requisite circumstances are these: the oath must be taken

in a judicial proceeding before a competent jurisdiction; and it must be material to the question depending and false. *Rex v. Aylett*, 1 T. R. 63.

On Foreign Affidavit.]—No perjury can be assigned upon a foreign affidavit. *Musgrave v. Medex*, 19 Ves. 562.

But any person making, or knowingly using a false affidavit made abroad, is guilty of a misdemeanor in attempting to pervert public justice, and is punishable by indictment. *Omealy v. Newell*, 8 East, 364.

Falsehood not Indictable.]—Falsehood, not strictly amounting to perjury, is an indictable offence as a misdemeanor. *Overton, Ex parte*, 2 Rose, 257.

Inciting to give Particular Evidence.]—Inciting a witness to give particular evidence, when the inciter does not know whether it is true or false, is a high misdemeanor, especially if he, being an attorney on one side, gets himself employed for that purpose on the other side: at least, if the evidence is given accordingly. *1b.*

What Sworn to in Affidavit.]—Quære, whether in an affidavit, the description of the deponent at the commencement of it is a part of what he swears. *Reg. v. Chapman*, 1 Den. C. C. 432; 2 C. & K. 846; T. & M. 90; 18 L. J., M. C. 152; 13 Jur. 885.

ii. Judicial Proceedings.

For Purpose of Filing Bill of Sale.]—H. was indicted for perjury in an affidavit made under the Bills of Sale Act, 1854 (17 & 18 Vict. c. 36), for the purpose of getting a bill of sale filed. The affidavit was sworn before a commissioner for taking affidavits in the court of Queen's Bench:—Held, that his offence did not constitute perjury, but that he was guilty of taking a false oath, which offence was under the circumstances a common law misdemeanor. *Reg. v. Hodgkiss*, 1 L. R., C. C. 212; 39 L. J., M. C. 14; 21 L. T. 564; 18 W. R. 150.

Before Surrogates to Procure Marriage Licence.]—The taking of a false oath before a surrogate to procure a marriage licence, will not support a prosecution for perjury. *Rex v. Foster*, R. & R. C. C. 459.

A. was indicted for making a false oath before a surrogate, for the purpose of obtaining a marriage licence:—Held, first, that a surrogate has a general power to administer an oath in that behalf, so as to make a false oath a misdemeanor. *Reg. v. Chapman*, 1 Den. C. C. 432; T. & M. 90; 2 C. & K. 846; 18 L. J., M. C. 152; 13 Jur. 885.

Held, secondly, that such false oath is a misdemeanor, as being made with a fraudulent intention, in a matter of public concern. *1b.*

Held, thirdly, that it was immaterial whether the marriage actually took place or not. *1b.*

In Bill for Injunction—No Motion Made.]—A party filing a bill for an injunction, and making an affidavit of matters material to it, is indictable for perjury committed in that affidavit, though no motion was ever made for the injunction. *Rex v. White*, M. & M. 271.

Informal Affidavits for Use in Court.]—Semble, that a person may be convicted of perjury contained in an affidavit intitled, in a cause, "A. B. against C. D. and others," although, by the rules of the courts, all affidavits should in their title name all the plaintiffs and all the defendants. *Reg. v. Christian*, Car. & M. 388.

An indictment may be supported against a marksman, for swearing falsely in an affidavit, though it would not be receivable in the court it was sworn in, because the jurat did not state that it had been read over to the party swearing it; but the person administering the oath must prove that the party swearing it in fact understood its contents, and the perjury is complete at the time of the swearing of the affidavit; and whether it is receivable in the court or not is immaterial, if the reason why it is not receivable is, that some formal regulation is not complied with. *Res v. Hailey*, 1 C. & P. 258; R. & M. 94.

Sheriffs' Court—Amendment Unauthorized.]—An unmarried woman having recovered judgment in a county court against A., obtained a judgment summons against him from the Sheriffs' Court, London. At the hearing, it having been ascertained that the plaintiff had married in the meantime, the judge amended the title of the cause by inserting the husband's name:—Held, that he had no power to do so, and consequently, that an indictment for perjury could not be maintained against the defendant for false evidence given at that hearing. *Reg. v. Pearce*, 3 B. & S. 531; 9 Cox, C. C. 258; 9 Jur., N. S. 647; 7 L. T. 597; 11 W. R. 235.

Court-martial.]—Semble, that taking a false oath before a court-martial is perjury at common law. *Reg. v. Heane*, 4 B. & S. 947; 9 Cox, C. C. 433; 10 Jur., N. S. 724; 9 L. T. 719; 12 W. R. 417.

Local Marine Board.]—Wilful and corrupt false swearing before a local marine board, duly and lawfully appointed and constituted, upon a matter material to an inquiry then being lawfully investigated by them, in pursuance of the 17 & 18 Vict. c. 104, and 25 & 26 Vict. c. 63, is perjury. *Reg. v. Tomlinson*, 1 L. R., C. C. 49; 36 L. J., M. C. 41; 12 Jur., N. S. 945; 15 L. T. 188; 15 W. R. 46.

Inquest before Deputy-Coroner.]—By 6 & 7 Vict. c. 83, s. 1, coroners are empowered to appoint deputies, provided that no deputy shall act "except during the illness of the coroner, or his absence from any lawful or reasonable cause." By s. 2, no inquisition shall be quashed by reason of such inquisition having been taken before any deputy instead of the coroner himself. A person being indicted for perjury committed upon an inquest held before a deputy-coroner, and the objection having been taken that there was no lawful or reasonable cause for the absence of the coroner:—Held, that whatever the cause of absence, by s. 2 a valid inquisition might have been founded upon the inquest, and therefore the deputy had jurisdiction, and perjury was committed. *Reg. v. Johnson*, 2 L. R., C. C. 15; 42 L. J., M. C. 41; 27 L. T. 801; 12 Cox, C. C. 264.

iii. Court of Competent Jurisdiction.

Master Extraordinary in Chancery.]—Before 17 & 18 Vict. c. 78, a master extraordinary in Chancery had no authority to administer oaths in matters before the Court of Admiralty; and a conviction for perjury in an affidavit used in the Court of Admiralty, but sworn before a master extraordinary in Chancery, could not be supported. *Reg. v. Stone*, Dears. C. C. 251; 23 L. J., M. C. 14; 17 Jur. 1106.

Registrar of Bankruptcy Court.]—The 1 & 2 Vict. c. 110, s. 8, contained provisions for filing affidavits of debt against a trader, and his being deemed to have committed an act of bankruptcy on not doing certain things. The 5 & 6 Vict. c. 122, contained other provisions relating to the same matter; and s. 67 enacts that affidavits to be made in matters of bankruptcy, or under any statute relating to bankrupts or this act, shall be sworn before a registrar of the Court of Bankruptcy. On an indictment for perjury, upon an affidavit made under 1 & 2 Vict. c. 110, s. 8, and sworn before the registrar of the Court of Bankruptcy:—Held, that 1 & 2 Vict. c. 110, so far as regarded sect. 8, was a statute relating to bankrupts within 5 & 6 Vict. c. 122, s. 67, and that the affidavit related to matters of bankruptcy, and, therefore, was sworn before competent authority. *Reg. v. Dunn*, 12 Q. B. 1026; 16 L. J., Q. B. 382; 11 Jur. 908.

Commissioners of Bankrupt.]—Perjury cannot be committed in evidence given before commissioners of bankrupt, when there was no good petitioning creditor's debt to support the fiat. *Reg. v. Ewington*, 2 M. C. C. 223; Car. & M. 319.

Before Arbitrators.]—A., a defendant in a suit tried before a county court judge, gave false evidence before an arbitrator, to whom the suit was referred, and by whom A. was sworn:—Held, before 14 & 15 Vict. c. 99, s. 16, that under 9 & 10 Vict. c. 95, s. 77, the arbitrator had no authority to administer an oath, and therefore A. was not liable to be indicted for perjury. *Reg. v. Hallett*, 2 Den. C. C. 237; T. & M. 563; 5 Cox, C. C. 238; 20 L. J., M. C. 197; 15 Jur. 433.

A cause was referred by a judge's order to C. D.; and by the order it was directed that the witnesses should be sworn before a judge, "or before a commissioner duly authorized." A witness was sworn before a commissioner for taking affidavits, and examined *viva voce* by the arbitrator:—Held, that a witness so sworn was not indictable for perjury. *Res v. Hanks*, 3 C. & P. 419.

Charge against Solicitor in summary way.]—Perjury may be assigned upon an affidavit of an attorney of the court, made in answer to a charge exhibited against him in a summary way. *Res v. Crossley*, 7 T. R. 315.

Before Justices—Upon Warrant illegally issued.]—H., a police constable, procured a warrant to be illegally issued, without a written information or oath, for the arrest of S., upon a charge of "assaulting and obstructing him, H., in the discharge of his duty." Upon such warrant S. was arrested and brought before justices,

and was, without objection, tried by them and convicted.—H. was afterwards indicted for perjury committed on the said trial of S., and convicted:—Held, that H. was rightly convicted, notwithstanding that there was neither written information, nor oath, to justify the issue of the warrant, and that the justices had jurisdiction to hear the charge, though the warrant upon which the accused was brought before them was illegal. *Reg. v. Hughes*, 4 Q. B. D. 614; 48 L. J., M. C. 151; 40 L. T. 685.

— **On the Hearing of a Bastardy Summons.]**

—By 7 & 8 Vict. c. 101, s. 2, where application for a bastardy summons is made before the birth of the child, “the woman shall make a deposition upon oath.” A man was convicted of perjury, alleged to have been committed on the hearing of a bastardy summons. The summons had been issued against him before the birth of the child. Upon the application for it no written deposition was made, but only a verbal statement upon oath by the woman. He appeared to the summons, and made no objection to its validity or to the jurisdiction of the court:—Held, that the court had jurisdiction to hear the summons, and that the conviction for perjury was right. *Reg. v. Fletcher*, 1 L. R. C. C. 320; 40 L. J., M. C. 123; 24 L. T. 742; 19 W. R. 781; 12 Cox, C. C. 77.

The mother of a bastard child, born on the 20th March, 1868, applied to a justice on the 18th April, 1868, for a summons against the putative father. A summons was issued on the same day, but never served, as he could not be found by the process server, to whom the summons was given. On the 14th January, 1870, about a fortnight after the mother had found out his address, she applied for and obtained another summons, which was served on him, and he appeared thereto, and being examined on oath, committed the perjury assigned:—Held, that the justices had jurisdiction to hear the complaint, although at the time of service of the summons more than twelve months had elapsed from the birth of the child. *Reg. v. Chugg*, 11 Cox, C. C. 558; 22 L. T. 556.

Perjury was committed before magistrates, upon the second application for a bastardy order, a former application having been dismissed on the merits:—Held, that the magistrates had jurisdiction, and that the prisoners were properly convicted. *Reg. v. Cooke*, 2 Den. C. C. 462; 21 L. J., M. C. 136; 16 Jur. 434.

A summons, after the birth of a child, under 7 & 8 Vict. c. 101, s. 2, against the putative father, was issued on the personal application of the mother of the bastard child, not upon oath. The putative father appeared to the summons, and defended the case on the merits, without objecting that the summons had issued on the statement of the woman, not on oath:—Held, that the putative father could not afterwards raise the objection; and that he was liable to be indicted for perjury committed by him on the hearing of the summons. *Reg. v. Berry*, 8 Cox, C. C. 121; Bell, C. C. 46; 28 L. J., M. C. 86; 5 Jur., N. S. 320; *S. P.*, *Reg. v. Simmons*, 8 Cox, C. C. 190; Bell, C. C. 168; 28 L. J., M. C. 183; 5 Jur., N. S. 578.

The mother of a bastard, having been resident with her parents in one petty sessional division, went to lodge at D. in another division, for the purpose of affiliating her child, D. being nearer and more convenient for her than the place

where the magistrates acting for the other division met. She lodged at D. three weeks before she obtained the summons, having in the interval made one unsuccessful application; and after obtaining the order went into service in the division in which her parents resided, but without returning to them; and she stated that she could not go back to them as they had nothing for her to do. Whilst at D. she had no other home:—Held, that the jury was warranted in finding that at the time of her application to the magistrates at D. she was residing within that petty sessional division; that consequently the magistrates had jurisdiction, and a conviction for perjury committed by her on that occasion was right. *Reg. v. Hughes*, 7 Cox, C. C. 286; Dears. & B. C. C. 188.

— **No Deposition or Information on Oath.]**

—An information founded on 1 & 2 Will. 4, c. 32, after stating an appearance and information by O. M. against R. R., proceeded thus:—“And the information having been also verified upon the oath of W. A., of &c., another credible witness, before me the said justice, hereupon O. M. prays that R. R. may be forthwith summoned, &c.”

“Exhibited by O. M., and sworn } O. M.
before me the day and year } W. A.
first above written.

“W. F. C.”

The party informed against having appeared before two justices, evidence was given by a witness for him. An indictment for perjury having been preferred against this witness, upon which he was found guilty:—Held, that the proceeding before the two justices was informal for want of a deposition on oath of the charge contained in the information, in pursuance of 6 & 7 Will. 4, c. 65; and that, therefore, the indictment could not be sustained. *Reg. v. Scotton*, 5 Q. B. 493; D. & M. 501; 8 Jur. 409.

But where an information, not upon oath, was laid before a justice of the peace under the Malicious Trespass Act, 7 & 8 Geo. 4, c. 30, s. 24, who thereupon issued a summons to the party charged; and at the hearing the prisoners were examined as witnesses, and upon the evidence which they gave perjury was subsequently assigned:—Held, that the hearing before the magistrates was a judicial proceeding, and that jurisdiction was given by the 24th section, although the information was not upon oath. *Reg. v. Millard*, Dears. C. C. 166; 6 Cox, C. C. 150; 22 L. J., M. C. 108; 17 Jur. 400.

— **Information for Furious Riding.]**—A person was indicted for perjury committed by him as a witness on an information before justices against A. for furious riding, contrary to 5 & 6 Will. 4, c. 50 (Highway Act), s. 78:—Held, that, as that section gives the justices no jurisdiction to impose any penalty for furious riding, he did not commit the offence of perjury. *Reg. v. Bacon*, 22 L. T. 627.

— **By Person not a competent Witness.]**—C. was indicted for perjury committed on the hearing of a summons which had been taken out against himself, for permitting gambling in his house contrary to the tenor of his licence, under 9 Geo. 4, c. 61. The defendant had tendered himself as a witness, representing himself as the son of C., and had thereupon been sworn and given evidence on behalf of C., who was

really himself, and that evidence formed the subject of the indictment:—Held, that as he was not a competent witness and could not give evidence in his own behalf, the magistrates had no power to swear him or receive his evidence, and that he could not therefore, be guilty of perjury. *Reg. v. Clegg*, 19 L. T. 47.

—**Complaint by Apprentice against Master.**]

—After the expiration of his term of apprenticeship, an apprentice summoned his master before a magistrate for neglecting to pay his wages, and upon the hearing of the complaint under 4 Geo. 4, c. 34, s. 2, the apprentice gave false evidence:—Held, that whether the 4 Geo. 4, c. 34, s. 2, required or not the complaint to be made before the expiration of the apprenticeship, the magistrate having general jurisdiction over the subject of complaint, perjury could be assigned on the false evidence given before him. *Reg. v. Proud*, 1 L. R., C. C. 71; 36 L. J., M. C. 62; 16 L. T. 364; 15 W. R. 796; 10 Cox, C. C. 455.

iv. *Matter must be Material.*

Oath before Surrogate.—An illegitimate child being filius nullius, an indictment charging a defendant with taking a false oath before a surrogate, and that E. was the natural and lawful father of E. E., and that his consent was necessary as such father, under 4 Geo. 4, c. 76, cannot be sustained. *Reg. v. Fairlie*, 9 Cox, C. C. 209.

Before Arbitrators.—Where perjury is assigned upon evidence given before an arbitrator, upon a reference at nisi prius, of a cause and all matters in difference between the parties, it must be distinctly shewn whether the evidence was material in respect of the matters in issue in the cause, or of the other matters in difference between the parties. *Reg. v. Ball*, 6 Cox, C. C. 360.

Action of Trover—Signature to Delivery Note.]

—At the trial of an action of trover by P. against the prisoner for some steel, the defence was that P., while the steel was lying at a railway station, sent for it, and signed a delivery note on receiving it, and then sold it to the prisoner. The prisoner, a witness, swore that the name, P., on the delivery note was P.'s handwriting, and that he saw him write it. The prisoner was indicted for perjury upon this evidence and found guilty:—Held, that the signature to the delivery note was material evidence in the action, upon which perjury could be assigned. *Reg. v. Naylor*, 11 Cox, C. C. 13; 17 L. T. 582; 16 W. R. 374.

On Indictment for Perjury in Affidavit.]

Upon the trial of C. for perjury, committed in an affidavit, proof was given that the signature to the affidavit was in his handwriting, and there was no other proof that he was the person who made the affidavit. The prisoner was then called, and swore that the affidavit was used before the taxing master, that C. was then present, and that it was publicly mentioned, so that everybody present must have heard it, that the affidavit was C.'s:—Held, that the matters sworn were material upon the trial of C. *Reg. v. Alsop*, 11 Cox, C. C. 264; 20 L. T. 403; 17 W. R. 621.

In Proving an Alibi on Criminal Charge.—S.

was indicted for robbery on April 13, at 8.45 p.m., and the prisoner swore that S. was in a house at a distant place at that time, and that S. had lodged at that house nearly two years, and had never been away for more than two or three nights at a time during the period. The prisoner was indicted for perjury on that evidence, and convicted on the assignments of perjury, as to S. having lodged at the house for two years, and never having been away more than two or three nights at a time:—Held, that the evidence on these points was material, as tending to induce the jury to give greater credit to the substantial fact of his being there on the 13th of April at the time in question. *Reg. v. Tyson*, 1 L. R., C. C. 107; 37 L. J., M. C. 7; 17 L. T. 292; 16 W. R. 317; 11 Cox, C. C. 1.

Bastardy Proceedings.—The prisoner was charged with perjury for having falsely sworn before magistrates at petty sessions that D. R. was the father of her illegitimate child. One assignment of perjury was, that at the trial the prisoner had falsely sworn that her master, who was uncle of D. R., had promised her that he would raise her wages, and allow her to lie in at his house, if she would swear the child to a person other than his nephew, D. R.:—Held, that such statement was not material to the issue so as to constitute the crime of perjury. *Reg. v. Owen*, 6 Cox, C. C. 105.

A summons was issued after the birth of a child, under 7 & 8 Vict. c. 101, s. 2, against the putative father:—Held, that evidence of payment of money by the putative father within twelve months of the birth of the child, being evidence of the paternity, was a material fact on the hearing of the summons. *Reg. v. Berry*, Bell, C. C. 46; 8 Cox, C. C. 121; 28 L. J., M. C. 86; 5 Jur., N. S. 320.

On Charge of Assault.—On an indictment for perjury committed on the hearing of a charge of assault by a man on his wife, an assignment in a statement by the accused, as a witness for the husband, that he had seen the wife committing adultery (of which he told the husband) is bad, for immateriality, as the supposed statement would not be legally relevant to the charge of assault as affording no ground of legal justification. *Reg. v. Tate*, 12 Cox, C. C. 7.

Inadmissible Evidence given but Withdrawn.]

—On a trial where it was material to prove whether J. had died before M., the defendant produced a document purporting to be a copy of J.'s will, and falsely swore that he had examined it with the original will in the registry; and also, that he had examined a memorandum at the foot of the copy of the will, with the entry in a book called the Act Book in the same registry. The judge offered to admit the evidence, but it was withdrawn; it was, in point of law, inadmissible:—Held, that the circumstance that the evidence was inadmissible, and was withdrawn, did not affect the question of perjury, as it could not purge the false swearing; and that, as it was material whether probate of J.'s will was granted in the lifetime of M., if the evidence of the prisoner had been received it would have been material to the issue, and, consequently, that the false oath of the prisoner amounted to perjury. *Reg. v. Phillpotts*, 2 Den.

C. C. 302; 3 C. & K. 135; T. & M. 607; 5 Cox, C. C. 363; 21 L. J., M. C. 18; 16 Jur. 67.

Inadmissible Evidence given and Admitted.]

—G. was indicted for perjury, in having falsely sworn that in September, 1860, he had carnal knowledge of A. A. had obtained an affiliation summons against H., and in her cross-examination denied having had connexion with the defendant in September, 1860 (a time which could not have made him the father of the child). The defendant was called as a witness on behalf of H., and swore that he had connexion with A. in the month named:—Held, that although his evidence was legally inadmissible, yet, being admitted, it became material, and perjury might be assigned upon it. *Reg. v. Gibbon, L. & C. 109; 9 Cox, C. C. 105; 31 L. J., M. C. 98; 8 Jur., N. S. 159; 5 L. T. 805; 10 W. R. 350.*

Action in County Court—Name of Defendant.]

—A defendant was sued in a county court by the name of Bernard Edward M. The judge decided that the plaintiff was entitled to recover, and whilst determining how the defendant should pay the debt, asked him his name; when he swore that it was Edward, not Bernard, only Edward; and thereupon the judge refused to amend, and struck out the cause. The defendant was indicted for perjury; and at the trial it was proved that he had wilfully and corruptly sworn falsely in the above answers, and the jury convicted him:—Held, that the conviction was right; the answers being sufficiently material to the matter under inquiry. *Reg. v. Mullaney, 10 Cox, C. C. 97; L. & C. 593; 34 L. J., M. C. 111; 11 Jur., N. S. 492; 12 L. T. 549; 13 W. R. 726.*

Denial in Answer to Bill in Equity.]—A. brought an action against B. and his partners for the price of wheat, and recovered a verdict on the bought and sold notes. B. and his partners filed a bill in equity against A., which stated that the bought and sold notes did not contain all the terms of the contract, as it had been also agreed by parol between A. and B., that the wheat should be paid for by a draft at three months; and the prayer of the bill was, that A. should be restrained from suing out execution. A., by his answer, denied the statement in the bill; and the bill was dismissed:—Held, that if this denial by A. was wilfully false, it amounted to perjury. *Reg. v. Yates, Car. & M. 132; 5 Jur. 636.*

In an answer in chancery to a bill in equity against the defendant for specific performance of an agreement relating to the purchase of land, he relied on the Statute of Frauds (the agreement not being in writing), and also denied having entered into any such agreement. Upon this denial in his answer, he was indicted for perjury:—Held, that the denial of an agreement, which, by the Statute of Frauds, was not binding on the parties, was immaterial and irrelevant, and that the defendant was entitled to an acquittal. *Reg. v. Dunstan, R. & M. 109.*

Perjury cannot be assigned on an answer in chancery, denying a promise absolutely void by the Statute of Frauds. *Reg. v. Benesech, Peake's Add. Cas. 93.*

Construction of Deed.]—Perjury cannot form the subject of an indictment where the supposed

perjury depends upon the construction of a deed. *Reg. v. Crespiigny, 1 Esp. 280.* And see *Reg. v. Pepps, Peake, 138.*

Record of Cause Erroneous.]—If the record of a cause is erroneous, no perjury can be assigned for false testimony given in the course of the trial. *Reg. v. Cohen, 1 Stark. 511.*

Reversal of Judgment on Writ of Error.]—A. was indicted for perjury, alleged to have been committed on the trial of B. for perjury. The indictment against A. averred, that the evidence he gave on the trial of B. was material, and that B. was convicted. B. was convicted and sentenced, but the judgment against B. was afterwards reversed on writ of error:—Held, that the reversal of the judgment against B. was no ground of defence for A., as shewing that his evidence could not have been material, and that it did not negative the allegation that B. had been convicted. *Reg. v. Meek, 9 C. & P. 513.*

Evidence going to Witness's Credit.]—Perjury may be assigned upon evidence going to the credit of a material witness in a cause, although such evidence, being legally inadmissible, ought not to have been received. *Reg. v. Gibbon, L. & C. 109; 9 Cox, C. C. 105; 31 L. J., M. C. 98; 8 Jur., N. S. 159; 5 L. T. 805; 10 W. R. 350.*

Every question on cross-examination of a witness, which goes to his credit, is material. *Reg. v. Overton, Car. & M. 655; 2 M. C. C. 263.*

A question having no general bearing on the matters in issue may be made material by its relation to the witness's credit, and false swearing thereon will be perjury. *Id.*

In an action in a county court by an executrix for goods sold, she falsely swore on cross-examination that she had never been tried at the Old Bailey, and had never been in custody at the Thames Police Station:—Held, on the trial of an indictment for perjury, that this evidence was material. *Reg. v. Lacey, 3 C. & K. 26.*

Materiality for Judge or Jury.]—Semble, that whether the evidence is material or not is a question to be left to the jury. *Id.* See *Reg. v. Courtney, 7 Cox, C. C. 111; Reg. v. Dunston, Ry. & M. 109, contra.*

On an assignment of perjury by a defendant in a hasty case, that he had never kissed the prosecutrix, the question of materiality is for the jury. *Reg. v. Goddard, 2 F. & F. 361.*

The question of materiality is for the judge. *Reg. v. Southwood, 1 F. & F. 356.*

v. Falsity of Statement.

What Sufficient.]—With respect to the falsity of an oath, it has been considered to be immaterial whether the fact which is sworn to, be in itself true or false. *Reg. v. Edwards, 3 Russ. C. & M. 1.*

A man may be indicted for swearing that he believes a fact to be true which he must know to be false, although he does not swear positively. *Reg. v. Pedley, 1 Leach, C. C. 325.*

Perjury may be assigned as to what a man has sworn that he thought or believed; the difficulty, if any, being in the proof of the assignment. *Reg. v. Schlesinger, 10 Q. B. 670; 2 Cox, C. C. 200; 17 L. J., M. C. 29; 12 Jur. 283.*

vi. *Deliberate Intention.*

Attention of Prisoner called to Subject.]—An indictment alleged that the prisoner swore on a plaint in the county court for the price of coals obtained on credit at different times, in which it was a material question whether or not he had received any coals on credit from P., either on account of himself or of A., that he had never received any coals on credit from P., either on account of himself or of A. At the trial the prisoner was asked three or four times by the advocate and judge whether he did at any time, either on his own account or on that of A., have any coals on credit from P., to which he always answered "I did not:—"Held, that his attention was sufficiently called to the subject so as to found a charge of perjury upon the answer, although no distinct transaction on credit was suggested to him during his examination. *Reg. v. London*, 12 Cox, C. C. 50; 24 L. T. 232.

b. **Indictment.**i. *Averments, Form of.*

Judicial Proceeding.]—An affidavit to hold to bail may be sworn before the issuing of the writ of summons in the action; and, therefore, an indictment for perjury committed in such an affidavit need not state that any action was pending. *King v. Reg. (in error)*, 3 Cox, C. C. 161; 14 Q. B. 31; 18 L. J., Q. B. 253—*Ex. Ch.*

Where perjury was charged to have been committed in that which was in effect the affidavit on an interpleader rule, and the indictment set out the circumstances of the previous trial, the verdict, the judgment, the fieri facias, the levy, the notice by the prisoner to the sheriff not to sell, and the prisoner's affidavit that the goods were his property, but omitted to state that any rule was obtained according to the Interpleader Act (1 & 2 Will. 4, c. 58):—Held, that the indictment was bad, as the affidavit did not appear to have been made in a judicial proceeding. *Reg. v. Bishop*, Car. & M. 302.

In a case of perjury committed before magistrates, the indictment merely stated that the defendant, intending to subject W. M. to the penalties for felony, went before two magistrates, and "did depose and swear," &c., setting out a deposition, which stated, that W. B. had put his hand into the defendant's pocket and taken out a 5*l.* note, and assigning perjury upon it:—Held, that this was bad, as it did not shew that any charge of felony had been previously made, or that the defendant then made any charge of felony, or that any judicial proceeding was pending before the magistrate. *Reg. v. Pearson*, 8 C. & P. 119.

An indictment for perjury, assigned on an affidavit sworn before the court, need not state, nor is it necessary to prove, that the affidavit was filed of record, or exhibited to the court, or in any manner used by the party. *Rees v. Crossley*, 7 T. R. 315.

As to what Cause or Matter.]—An indictment alleged that a petition was presented to the House of Commons against the return of B., on the ground of bribery; that, shortly before his election, to wit, on the 6th July, B. and C. went to the house of the defendant to solicit his vote; that, at the time of the petition, it was a material question whether at the time when B. and C.

went to the defendant's house, a certain act of bribery took place, that the defendant was a witness sworn to speak the truth of and concerning the premises, and he deposed touching the election and the matter of the petition, that shortly before B.'s election B. and C. came on a canvassing visit to the defendant's house, and that the act of bribery then took place (*innuendo*), thereby meaning that at the time when B. and C. went to the defendant's house as aforesaid, the act of bribery was committed:—Held, on motion in arrest of judgment: first, that the allegation that the defendant deposed "touching the election," &c., sufficiently pointed to the matter whereupon the defendant was sworn as a witness; secondly, that the *innuendo* did not introduce new matter, as from the introductory averment it appeared there was a canvassing visit on the 6th July, and the deposition of the defendant was shewn to refer to that particular time and no other. *Reg. v. Verrier* or *Virrier*, 4 P. & D. 161; 12 A. & E. 317.

An indictment alleging that a cause "came on to be heard and was duly tried by a jury," is sufficient, although no verdict was given, the trial ending in a nonsuit. *Reg. v. Bray*, 9 Cox, C. C. 218.

Stating that at such a court, K. was in due form of law tried upon a certain indictment then and there depending against him for murder, is a sufficient averment that the perjury was committed on the trial of K. for murder. *Rees v. Dowlin*, 5 T. R. 311; *S. C.* (at nisi prius), Peake, 170.

As to Jurisdiction of Court or Judge.]—By 14 & 15 Vict. c. 100, s. 20, in every indictment for perjury, or for unlawfully, wilfully, falsely, fraudulently, deceitfully, maliciously, or corruptly taking, making, signing, or subscribing any oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate, or other writing, it shall be sufficient to set forth the substance of the offence charged upon the defendant, and by what court, or before whom the oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate, or other writing was taken, made, signed, or subscribed, without setting forth the bill, answer, information, indictment, declaration, or any part of any proceeding, either in law or in equity, and without setting forth the commission or authority of the court, or person before whom such offence was committed.

By s. 21, in every indictment for subornation of perjury, or for corrupt bargaining or contracting with any person to commit wilful and corrupt perjury, or for inviting, causing, or procuring any person unlawfully, wilfully, falsely, fraudulently, deceitfully, maliciously, or corruptly to take, make, sign, or subscribe any oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate or other writing, it shall be sufficient whenever such perjury, or other offence aforesaid, shall have been actually committed, to allege the offence of the person who actually committed such perjury or other offence in the manner hereinbefore mentioned, and then to allege that the defendant unlawfully, wilfully, and corruptly did cause and procure the said person the said offender, in manner and form aforesaid, to do and commit; and whenever such perjury, or other offence aforesaid, shall not have been actually committed, it shall be sufficient to

set forth the substance of the offence charged upon the defendant, without setting forth or averring any of the matters or things rendered unnecessary to be set forth or averred in the case of wilful and corrupt perjury.

By s. 30, indictment includes information.

In an indictment for perjury committed at an admiralty session, where the commission was directed to A., B. and C., and others not named, of whom A., B. and C. were amongst others to be one; the court will take it to mean, that, if either of the persons named of the quorum was present, it would be sufficient. *Re v. Dowlin*, 5 T. R. 311; *S. C.* (at nisi prius), Peake, 170.

In an indictment for perjury, the necessity for shewing distinctly that the false oath is in a judicial proceeding is not dispensed with by 23 Geo. 2, c. 11, s. 1. *Overton v. Reg.* (in error), 4 Q. B. 83; 3 G. & D. 133; 12 L. J., M. C. 61; 7 Jur. 186.

An indictment averring that "in the White-chapel County Court of Middlesex, holden before J. M., judge of the court, an action, then pending in the court, came on to be tried, that the defendant was sworn as a witness before J. M., being judge of the said county court, and having sufficient and competent authority to administer the said oath;" and then perjury was assigned, sufficiently shews on the face of the indictment that the court was properly constituted under 9 & 10 Vict. c. 95, and that the judge had jurisdiction over the cause in which the perjury was alleged to have been committed. *Lacey v. Reg.* (in error), 17 Q. B. 496; 2 Den. C. C. 504; 5 Cox, C. C. 259; 21 L. J., M. C. 10; 16 Jur. 36—Ex. Ch.; *S. P.*, *Reg. v. Lawlor*, 6 Cox, C. C. 187.

An indictment stated that V. had done business as an attorney for the defendant on his retainer; that V. delivered his bill, and, after the expiration of one month from such delivery, took out a summons before a judge, under 6 & 7 Vict. c. 73, to shew cause why the bill should not be referred for taxation; that it then and there became and was material in shewing cause to ascertain whether the defendant did retain V.; and that he, before shewing cause, made an affidavit, denying that he had retained V. and assigned perjury on such affidavit:—Held, that the jurisdiction was sufficiently shewn on the indictment, without negating a prior application to have the costs taxed by the party chargeable, in which case only the act authorizes an application to the judge by the attorney. *Ryalls v. Reg.* (in error), 11 Q. B. 781; 3 Cox, C. C. 254; 18 L. J., M. C. 69; 13 Jur. 259—Ex. Ch.

Where, to give magistrates jurisdiction to hear a case punishable on summary conviction, it is essential that they should have an information on oath made before them, it is not sufficient in an indictment for perjury, alleged to have been committed on the hearing of such information, to allege that before M. G., esq., and T. H. H., clerk, two of the justices, &c., the magistrates who heard the case, J. O. came and exhibited a certain information upon oath, because it does not sufficiently shew that J. O. was sworn before M. G. and T. H. H. *Reg. v. Goodfellow*, Car. & M. 569.

An indictment charged that a petition for protection from process was under 5 & 6 Vict. c. 116, 7 & 8 Vict. c. 96, and 10 & 11 Vict. c. 102 (Insolvent Debtors Acts), filed and presented at the county court of S., at W., by the defendant; that he afterwards obtained an order of protec-

tion; but afterwards, while the proceedings were pending in the county court, to wit, at the time of filing the petition and schedule, he came before K., a commissioner to administer oaths in chancery, duly appointed and empowered to act in the matter of the insolvent, and take the defendant's oath then and there at the county court, and within the jurisdiction aforesaid, for the purpose of making an affidavit, and verifying his petition on oath, and was duly sworn before K., and swore and took his oath that the affidavit then made was true, K. having competent power and authority to administer the oath. The indictment then alleged that certain matter was material in the matter of the insolvency, and that the affidavit was false in respect thereof. The defendant was convicted, and judgment passed:—Held, that the jurisdiction of the court sufficiently appeared, though there was no express allegation that the defendant had resided for six calendar months before the filing of the petition within the district of the county court, as required by 11 & 12 Vict. c. 102, s. 6. *Walker v. Reg.* (in error), 8 El. & Bl. 439; 27 L. J., M. C. 43; 3 Jur., N. S. 1259.

In an indictment for making a false affidavit, it is sufficient to state that the defendant came before A., and took his corporal oath (A. having power to administer an oath), without setting out the nature of A.'s authority. *Re v. Cullanan*, 6 B. & C. 102; 9 D. & R. 97.

In an indictment for perjury, alleged to have been committed on the hearing of an information under the Beer Act (11 Geo. 4 & 1 Will. 4, c. 64), s. 15, it is necessary to aver that the justices were acting in and for the division or place in which the house is situated; but it is not necessary to aver that they were acting in petty sessions, as every meeting of two justices in one place for business is itself a petty sessions. *Reg. v. Ravens*, 8 C. & P. 439.

An indictment alleged that after 18 & 19 Vict. c. 118, K. was duly summoned to appear before certain justices, being and acting as two justices of the peace in and for a county, to answer before such justices a certain information and complaint against him, of having opened his house (a beer-house) on a Sunday, for the sale of beer, after three and before five in the afternoon; that K. duly appeared before the justices at the petty sessions of a petty sessional division in the county, and that at the hearing, the defendant being called as a witness for K., falsely swore that he had not been in the house of K. at all that day; that he had never seen a certain policeman, and had not been in B. that day, or for a fortnight before. At the trial it appeared that no information had been laid in support of the summons, but that a superintendent of police had stated certain facts to the magistrate's clerk, who had filled up a blank summons against K., which a magistrate had signed without making any inquiry. The summons was not produced. A policeman swore to the fact of the defendant having been in K.'s house between the prohibited hours, and to confirm him one witness swore he had seen the defendant in B. at two o'clock in the afternoon of the same day; and another swore that she had seen him there between three and four on the same day, on the road leading and close to K.'s beerhouse:—Held, that it was sufficiently alleged in the indictment that the offence was one over which the justices had jurisdiction, and that it was committed in a

place where they had jurisdiction; that the production of an information at the trial was not necessary, and that the corroborative evidence was sufficient. *Reg. v. Shaw*, L. & C. 579; 10 Cox, C. C. 66; 34 L. J., M. C. 169; 11 Jur., N. S. 415; 12 L. T. 470; 13 W. R. 692.

An indictment for perjury stated the offence to have been committed on the trial of "a certain indictment for misdemeanor" at the quarter sessions for a county; but did not state what the misdemeanor was, nor that the quarter sessions had jurisdiction to try it:—Held, that the indictment was good. *Reg. v. Dunning*, 1 L. R., C. C. 290; 40 L. J., M. C. 58; 24 L. T. 38; 19 W. R. 357; 11 Cox, C. C. 651.

As to Falsity of Statement.—An indictment which charges that the prisoner "feloniously, corruptly, knowingly, wilfully, and maliciously swore," omitting the word "falsely," but concluding, "and so the defendant in manner and form aforesaid did commit wilful and corrupt perjury," is bad. *Reg. v. Orley*, 3 C. & K. 317.

An information for perjury, charging that the defendant, before a committee of the House of Commons, being duly sworn, "knowingly and deliberately, and of his own act and consent, did depose and swear" to certain facts set forth in the information; and that he afterwards, at the bar of the House of Lords, being duly sworn, "knowingly, &c., did swear" to certain facts contradicting what he had previously sworn before the committee of the House of Commons; with a conclusion, "and so the defendant, in manner and form aforesaid, did commit wilful and corrupt perjury;" cannot be sustained, and is bad in arrest of judgment. *Reg. v. Harris*, 1 D. & R. 578; 5 B. & A. 926.

That Offence committed Wilfully.—The word "wilful" is not necessary in an indictment for perjury at common law. *Reg. v. Cor*, 1 Leach, C. C. 71.

But it is otherwise in an indictment for perjury on 5 Eliz. c. 9. *Id.*

An indictment charging that the defendant falsely and maliciously gave false testimony, without averring that the offence was wilfully or that it was corruptly committed, is bad in arrest of judgment. *Reg. v. Richards*, 7 D. & R. 655; S. C., nom. *Reg. v. Stevens*, 5 B. & C. 346.

It is not a sufficiently precise allegation upon which to found an indictment for perjury, that the prisoner swore that a certain event did not happen within two fixed dates, his attention not having been called to the particular day upon which the transaction was alleged to have taken place. *Reg. v. Stoddy*, 1 F. & F. 518.

That Defendant was Sworn.—A count alleging that at the trial of the prosecutor he was found guilty by means of the false and malicious testimony of the defendant in the first count mentioned; and that, on a rule nisi for a new trial, the defendant knowingly, falsely, wilfully, and corruptly made an affidavit that the evidence given by him at the trial was true, "whereas it was false in the particulars in the first count assigned and set forth," is bad, for it should have averred distinctly that the defendant was sworn as a witness, and deposed to certain facts at the trial, instead of leaving it to be taken by intendment. *Reg. v. Richards*, 7 D. & R. 655; S. C., sub nom. *Reg. v. Stevens*, 5 B. & C. 346.

It is sufficiently certain if it is stated that the defendant was in due manner sworn. *Reg. v. McCarther*, Peake, 155.

Time and Place when and where Offence Committed.—In an indictment there must be an allegation of time and place, which are sometimes material, and necessary to be laid with precision, and sometimes not. *Reg. v. Aylett*, 1 T. R. 63.

Where an indictment alleged that R. W. falsely swore that "he was in the bar of the house of J. B., on the 15th day of February last, from between the hours of six o'clock and seven o'clock in the evening of the said last-mentioned day, until nine o'clock in the evening of the said last-mentioned day, and that he, R. W., did not then and there play at any game of cards at all:"—Held, that perjury was not sufficiently assigned by an averment that "the said R. W. did then and there (to wit) in the said bar of the said house and premises of the said J. B. on the said 15th day of February last, and between the hours of six o'clock in the evening of the said last-mentioned day, and eight o'clock in the evening of the said last-mentioned day, play at a certain game of cards." *Reg. v. Whitehouse*, 3 Cox, C. C. 86.

An indictment alleged that a cause was pending in a county court, and that at the hearing it became a material question whether the plaintiff in the cause had, in the presence of the prisoner, signed at the foot of a bill of account, purporting to be a bill of account between a firm called B. & Co. and W., a receipt for payment of the amount of the bill; and that the prisoner falsely swore that the plaintiff did, on a certain day, in the presence of the prisoner, sign the receipt (meaning a receipt at the foot of the first-mentioned bill of account) for the payment of the amount of the bill. The plaintiff in the county court had on other occasions signed similar receipts in the presence of the prisoner:—Held, that the bill of account was stated and set forth in the indictment with sufficient certainty. *Reg. v. Webster*, Bell, C. C. 154; 8 Cox, C. C. 187; 28 L. J., M. C. 200; 5 Jur., N. S. 604; 7 W. R. 449.

An indictment stating that the defendant swore that a particular fact occurred on the day on which a certain memorandum bore date, and at the time of making a certain bill of exchange, without averring that they were the same days; and the assignment of perjury alleging that the fact did not occur on the day on which the memorandum bore date, is uncertain, and therefore bad. *Reg. v. Burraston*, 4 Jur. 697.

An indictment charged that the prisoner swore on a plaint in a county court for the price of coals obtained on credit at different times, in which it was a material question whether or not he had received any coals on credit from P., either on account of himself or A., "that he had never received any coals on credit from P., either on account of himself or A.:"—Held, that the allegation was not too general, although no specific instance was averred in which the prisoner had received coals on credit from P. *Reg. v. London*, 12 Cox, C. C. 50; 24 L. T. 232.

It is not a sufficiently precise allegation upon which to found an indictment for perjury, that the prisoner swore that a certain event did not happen within two fixed dates, his attention not having been called to the particular day upon

which the transaction was alleged to have taken place. *Reg. v. Stodady*, 1 F. & F. 518.

Averment of Materiality.—What Sufficient.]—An indictment stated, that L. stood charged by F. W., before T. S., clerk, a justice of the peace, with having committed a trespass, by entering and being in the daytime on land in pursuit of game, on the 12th August, 1843; and that T. S. proceeded to the hearing of the charge; and that, upon the hearing of the charge, the defendant falsely swore that he did not see L. during the whole of the 12th August, meaning that he did not see L. at all on the 12th day of August, in the year aforesaid; and that, at the time he swore as aforesaid, it was material or necessary for T. S., so being such justice, to inquire of, and be informed by the defendant, whether he did see L. at all during the 12th day of August, in the year aforesaid:—Held, that this averment of materiality was insufficient, because, consistently with this averment, it might have been material for T. S. in some other matter, and not in the matter stated to have been in issue before him, to have put this question and received this answer. *Reg. v. Bartholomew*, 1 C. & K. 366.

In an indictment it was alleged to be a material question whether or not the prisoner ever got one Milo Williams to write a letter for her; and in the averments, negating the truth of what was sworn, the indictment alleged, that, in truth and in fact, the said Mary Ann Bennett did get the said Milo Williams, and that when on her cross-examination at the trial, when the alleged perjury was committed, she was asked whether she had ever got a Mr. Milo Williams (who was then pointed out to her in court) to write a letter for her:—Held, that the averments were sufficient, without any allegation connecting the "one Milo Williams" named in the allegations of materiality, and the averments negating the truth of what was sworn, with the "Mr. Milo Williams" named in the subsequent part of the indictment. *Reg. v. Bennett*, 3 C. & K. 124; 2 Den. C. C. 241; T. & M. 567; 5 Cox, C. C. 207; 20 L. J., M. C. 217; 15 Jur. 496.

An indictment alleging that one E. S. had filed a bill in chancery against the defendant J. C. and others, wherein he prayed that the defendant J. C. might answer the premises; and that a purchase by J. C. of certain property belonging to the other defendants might be declared fraudulent and void; and that it then and there became a material question whether the said J. C. did advise the said other defendants that the said property should be sold; and that the said J. C. falsely and corruptly swore, and in and by his answer denied, that he had so advised, is had in arrest of judgment, for want of a sufficient averment of materiality. *Reg. v. Cutts*, 4 Cox, C. C. 435.

An indictment stated that it became a material question, whether, on the occasion of a certain alleged arrest, L. touched K.; and the defendant's evidence as set out was,—L. put his arms round him and embraced him; innuendo that L. had, on the occasion to which the said evidence applied, touched the person of K.:—Held, that the materiality of the evidence did not sufficiently appear. *Reg. v. Nicholl*, 1 B. & Ad. 21.

In an indictment, the assignment was that the defendant upon his oath did swear "that he then thought that the words written in red ink were

not his writing, and that he had not in the presence of W. D. written the words so written in red ink, whereas in truth and in fact the words so written in red ink were the defendant's writing, and whereas also, in truth and in fact, he then and there, when he so deposed as aforesaid, thought that the words so written in red ink as aforesaid were his writing:—Held, that perjury might be assigned upon the deposition of the defendant. *Reg. v. Schlesinger*, 10 Q. B. 670; 2 Cox, C. C. 200; 17 L. J., M. C. 29; 12 Jur. 283.

Held, also, that the materiality of the allegation that the defendant wrote the words in the presence of W. D. being averred, the court would not inquire into it. *Id.*

On an indictment for perjury alleged to have been committed in answer to a certain interrogatory exhibited in a suit in the Ecclesiastical Court, it appeared that a suit for divorce, on the ground of adultery, had been instituted against the prosecutor by his wife; that the defendant was a witness examined on behalf of the wife to prove her case; that cross interrogatories were exhibited to him by the prosecutor by way of cross-examination, one of which, put for the purpose of impeaching his character, was the following:—"Have you not passed by the name of Abbott, and also of Johnson?" His answer was, "I have never passed by the assumed name of Abbott or Johnson." It was clearly proved that he had:—Held, that the question and answer were not sufficiently material to the issue to warrant the case going to the jury. *Reg. v. Worley*, 3 Cox, C. C. 535.

It is not necessary expressly to aver materiality in any indictment for perjury. It will be sufficient if materiality is clearly disclosed by the facts as stated on the face of the indictment. If materiality is not sufficiently averred, or apparent, the defect is not cured by 14 & 15 Vict. c. 100, s. 20. Nor is it such a defect as the judge will amend under sect. 25. *Reg. v. Harvey*, 8 Cox, C. C. 99.

A variance between the form of oath proved and that stated in the indictment is immaterial. The circumstance that the statement may probably influence the person to decide will not make it material, if not legally material, to the matter under consideration. *Reg. v. Southwood*, 1 F. & F. 356.

An indictment for perjury alleged as committed on the trial of an issue in a cause, with averments of materiality to such issue, is sustained, although it appears that there were several issues in the cause. *Reg. v. Smith*, 1 F. & F. 98.

An indictment, in which it is intended to assign perjury upon several statements in the defendant's evidence relating to several different matters, should allege that there were several material questions, and certain distinct and separate assignments of falsehood upon each. *Reg. v. Burraston*, 4 Jur. 697.

Where, upon an indictment for perjury, on a trial for felony, it neither appeared that the matter sworn was material, nor was it alleged to be so:—Held, that if the original indictment had been set out, and the materiality could plainly have been collected, it would have been sufficient without any special averment, but that one or the other was absolutely necessary. *Reg. v. Dunn*, 1 D. & R. 10.

Stating that at such a court (a court of admiralty session), K. was in due form of law tried upon a certain indictment then and there depend-

ing against him for murder, and that at and upon the trial it then and there became and was made a material question, whether, &c., are sufficient averments that the perjury was committed on the trial of K. for the murder, and that the question on which the perjury was assigned was material on that trial. *Reg. v. Dowlin*, 5 T. R. 311; *S. C.* (at nisi prius), Peake, 170.

It is not necessary to set forth so much of the proceedings of the former trial as will shew the materiality of the question on which the perjury is assigned; it is sufficient to allege generally that the particular question became material. *Ib.*

An averment, that it became and was material to ascertain the truth of the matter hereinafter alleged to have been sworn to, and stated by J. G. upon his oath, is not a good averment of materiality. *Reg. v. Goodfellow*, Car. & M. 569.

An indictment for perjury committed before a magistrate, stating that the defendant went before the magistrate and was sworn, and that he did falsely, &c., "say, depose, swear, charge and give the justice to be informed," that he saw the prosecutor commit bestiality, sufficiently shews that the oath was taken in a judicial proceeding; and it being also stated in the indictment that it was material "to know the state of the said A. B.'s dress at the time the offence was so charged to be committed as aforesaid," is a sufficient averment of materiality to allow the prosecutor to shew that the flap of his trousers was not unbuttoned (as sworn by the defendant), and that his trousers had no flap. *Reg. v. Gardiner*, 8 C. & P. 737; 2 M. C. C. 95.

If it appear sufficiently from the oath itself, that it was material to the matter then before the court, it is unnecessary to aver that fact; but if it do not appear, then the materiality of that part of the oath upon which perjury is assigned must be averred. *Reg. v. McKeron*, 5 T. R. 316.

An indictment contained four counts, each of which stated that V. had done business as attorney for the defendant on his retainer; that V. delivered his bill and took out a summons to shew cause why the bill should not be referred to taxation; that it then and there became and was material in shewing cause to ascertain whether the defendant did retain V.; and that he, before shewing cause, made an affidavit, denying that he had retained V.; and assigned perjury on the affidavit:—Held, that the fact of the retainer by the defendant was a material ingredient in the inquiry and was sufficiently averred. *Ryalls v. Reg.* (in error), 11 Q. B. 781; 3 Cox, C. C. 254; 18 L. J., M. C. 69; 13 Jur. 259—Ex. Ch.

An indictment for perjury stated that an action was brought in the Chancery Division, in which the prisoner was the plaintiff and W. the defendant, that it came on for hearing before the vice-chancellor, that the prisoner did appear as a witness, and did falsely swear that he never did employ O. and H. as his solicitors, and that he never executed any mortgage or deed relating to the property claimed in the action, and that the allegation in the statement of defence in the action that he executed the deeds in the statement of defence mentioned was untrue, "and the said false statements so upon oath made by the prisoner were material to the matters then in issue before the court:"—Held, upon motion in arrest of judgment, that the indictment was good, and that the averment of the materiality of the perjury assigned was sufficient. *Reg. v. Scott*,

2 Q. B. D. 415; 46 L. J., M. C. 259; 36 L. T. 476; 25 W. R. 697; 13 Cox, C. C. 594.

Construction—Month, what is.]—An indictment contained four counts, each of which stated, that for the defendant on his retainer V. had done business as attorney; that V. delivered his bill, and after the expiration of one month from such delivery took out a summons before a judge, under 6 & 7 Vict. c. 73, to shew cause why the bill should not be referred for taxation; that it then and there became and was material in shewing cause to ascertain whether the defendant did retain V.; and that he, before shewing cause, made an affidavit, denying that he had retained V.; and assigned perjury on such affidavit:—Held, that as all the counts referred to the statute, the word "month" was to be construed according to the interpretation clause, and meant calendar month. *Ryalls v. Reg.* (in error), 3 Cox, C. C. 254; 11 Q. B. 781; 18 L. J., M. C. 69; 13 Jur. 259—Ex. Ch. Affirming *S. C.*, 17 L. J., M. C. 93; 12 Jur. 458.

For what Purpose Offence committed.]—If an indictment for taking a false oath before a surrogate, to procure a marriage licence, only charges the taking of the false oath, without stating it was for the purpose of procuring a licence, or that a licence was procured thereby, the party cannot be punished thereon as for a misdemeanor. *Reg. v. Foster*, R. & R., C. C. 459.

What may be included in.]—An indictment for perjury contained two counts, charging perjury to have been committed by the defendant on two different occasions, one in the progress of a trial, the other in an affidavit in chancery. Both acts of perjury had the same object in view:—Held, that though the offences were in this way distinct, they might both be included in the same indictment, and that a general finding of guilty on the charges contained in both counts was good. *Castro v. Reg.*, 6 App. Cas. 229; 50 L. J., Q. B. 497; 44 L. T. 350; 29 W. R. 669; 45 J. P. 452; 14 Cox, C. C. 546—H. L. (E.)

What Parts must be set out.]—Where perjury is assigned upon several parts of an affidavit, those parts may be set out in the indictment as if continuous, although they are in fact separated by the introduction of other matter. *Reg. v. Cullanan*, 6 B. & C. 102; 9 D. & R. 97.

Rejecting as Surplusage.]—A person was indicted for wilful and corrupt perjury in making a false affidavit before a commissioner for taking oaths in the Court of Queen's Bench, for the purpose of getting a bill of sale filed under the Bills of Sale Act, 1854:—Held, a misdemeanor, though not wilful and corrupt perjury, and that the conclusion of an indictment for perjury, "that so the defendant did commit wilful and corrupt perjury," might be rejected as surplusage, and a conviction for the misdemeanor was right upon such an indictment. *Reg. v. Hodgkiss*, 1 L. R., C. C. 212; 39 L. J., M. C. 14; 21 L. T. 564; 18 W. R. 150.

An indictment contained four counts, each of which stated, that V. had done business as an attorney for the defendant on his retainer, and concluded as follows: "and so the jurors aforesaid did say, that the defendant did commit perjury:"—Held, that such averment was im-

material and might be struck out as surplusage. *Ryalls v. Reg. (in error)*, 3 Cox, C. C. 254; 11 Q. B. 781; 18 L. J., M. C. 69; 13 Jur. 259—Ex. Ch. Affirming *S. C.*, 17 L. J., M. C. 93; 12 Jur. 458.

ii. Amendment of Variances.

In what Cases permissible.—If materiality is not sufficiently averred, or apparent, the defect is not cured by 14 & 15 Vict. c. 100, s. 20. Nor is it such a defect as the judge will amend under s. 25. *Reg. v. Harey*, 8 Cox, C. C. 99.

The judge at the trial of an indictment for perjury has power to amend an inaccurate description of the time of passing a statute referred to in the indictment. *Reg. v. Westley*, Bell, C. C. 193; 29 L. J., M. C. 35; 5 Jur., N. S. 1362.

Where the title of an act of parliament is not accurately stated, but still so stated as to enable the judges to know that there can be but one act referred to, such misstatement is immaterial. *Id.*

On a charge of perjury alleged to have been committed before commissioners to examine witnesses in a Chancery suit, the indictment stated that the four commissioners were commanded to examine the witnesses. Their commission was put in, and by it the commissioners, or any three or two of them, were commanded to examine the witnesses:—Held, a fatal variance, and the judge would not allow it to be amended under 9 Geo. 4, c. 15. *Reg. v. Hewins*, 9 C. & P. 786.

An indictment for perjury, alleged to have been committed on the trial of *S. S.*, averred that the trial took place at the Assizes and General Sessions of the Delivery of the Gaol of Our Lady the Queen for the county of *S.*, before John Lord Campbell, C. J., of our Lady the Queen, assigned to hold pleas before the Queen herself, and Sir E. V. Williams, Knt., one of the justices of our Lady the Queen, of her Court of Common Pleas, assigned to deliver the gaol of the prisoners therein being. It being objected that this was a defective description, as alleging a court with an impossible combination of civil and criminal jurisdiction:—Held, that the word “assizes” might be struck out as surplusage. *Reg. v. Child*, 5 Cox, C. C. 197.

It being also objected that the words “assigned to deliver the gaol of the prisoners therein being,” referred only to the last-named judge:—Held, that the indictment might be amended by the record of the conviction of *S. S.*, by inserting after the words “Common Pleas,” “and others their fellows, justices,” assigned to deliver the gaol. *Id.*

The record of the conviction of *S. S.* described the court as a general session of oyer and terminer and gaol delivery. It also described the charge against *S. S.* as for cutting and wounding; the indictment describing it as for wounding:—Held, that these variances might also be amended. *Id.*

In an indictment for perjury, the perjury was alleged to have been committed on the trial of an indictment against *B.*, for setting fire to a certain barn of *P.* In support of the averment, a certificate of the trial and conviction of *B.* was produced, but the offence there mentioned was setting fire to “one stack of barley.” The offence was, in fact, the same, the barn and the stack having been destroyed by one fire:—Held, that the indictment might be amended under 14 & 15 Vict. c. 100, s. 1. *Reg. v. Neville*, 6 Cox, C. C. 69.

In an indictment, perjury was alleged to have been committed on the hearing of a complaint for entering land for the purpose of taking game, contrary to 9 Geo. 4, c. 69, “before *L.* and *J.*, being justices in and for the county of *D.*, and acting in and for the borough of *T.*, in the said county.” In fact, *L.* and *J.* were justices for the borough only, and not for the county:—Held, that the variance was amendable. *Reg. v. Western*, 1 L. R., C. C. 122; 37 L. J., M. C. 81; 18 L. T. 299; 16 W. R. 730; 11 Cox, C. C. 93.

c. Evidence.

i. Generally.

What must be Proved.—If the perjury is committed at the trial of a cause, the prosecutor must prove the whole of the defendant’s testimony. *Reg. v. Jones*, Peake, 37.

Unless the point upon which the perjury is assigned arose upon the defendant’s cross-examination. *Reg. v. Dowlin*, Peake, 170.

In an indictment for perjury committed on the trial of a cause, it is sufficient for the prosecutor to prove all the evidence given by the defendant, referable to the fact on which perjury is assigned. *Reg. v. Rowley*, R. & M. 299.

If an indictment undertakes to set out continuously the substance and effect of what the defendant swore when examined as a witness, it is necessary to prove that in substance and effect he swore the whole of that which is thus set out, though the indictment contains several distinct assignments of perjury. *Reg. v. Leepe*, 2 Camp. 134.

If in an indictment for swearing falsely before a surrogate to obtain a marriage licence, the description of the deponent and other things material are alleged to be falsely sworn (but not alleging the false swearing to be in an affidavit), proof of the false swearing as to any one of the other things will sustain the count. *Reg. v. Chapman*, 1 Den. C. C. 432; 2 C. & K. 846; T. & M. 90; 18 L. J., M. C. 152; 13 Jur. 885.

That Court had Jurisdiction.—An indictment for perjury alleged the offence to have been committed before *J. U.*, then being and sitting as the duly qualified and appointed deputy judge of the county court of *W.* Proof was given that the perjury took place in the presence of *J. U.*, at the county court, and a certified minute, under the seal of the court, of the proceedings, was put in evidence, intitled “Minute of judgments, orders, and other proceedings, at a court holden at &c., before *J. U.*, deputy judge of the court:” —Held, that there was sufficient proof of his acting as deputy judge, and therefore *prima facie* evidence of his appointment as such. *Reg. v. Roberts*, 38 L. T. 690.

Held, also, that by the County Courts Act, 9 & 10 Vict. c. 95, s. 111, the minute of the proceedings being made evidence of the proceedings and their regularity, was evidence of the regularity of *J. U.*’s appointment. *Id.*

An affidavit purporting to be sworn before a public commissioner is admissible on the trial of an indictment for perjury without proof of the commission; proof of the commissioner’s acting as such is sufficient. *Reg. v. Howard*, 1 M. & Rob. 187; *S. P.*, *Reg. v. Verelst*, 3 Camp. 432.

An indictment for perjury in an affidavit stated the affidavit to have been sworn “before *R. G. W.*,

then and there being a commissioner, duly authorized and empowered to take affidavits in the county of Gloucester, in or concerning any cause depending in the Court of Exchequer at Westminster." It was proved by R. G. W. that he had acted as a commissioner for taking affidavits in the Exchequer for ten years, but had never seen his commission; and that ten years ago, he applied to his agent to procure for him a commission to take affidavits in the Exchequer, and that his agent had told him that he had done so:—Held, that the proof of R. G. W.'s acting as a commissioner was *prima facie* evidence that he was so. *Reg. v. Newton*, 1 C. & K. 469.

That Action is Pending or that Cause Tried.]

—To prove that the action was pending, the copy of the writ of summons filed under the rules of the Judicature Act, and a copy of the pleadings in the action, and the order dismissing the action, were produced:—Held, sufficient without the original writ of summons. *Reg. v. Scott*, 2 Q. B. D. 415; 13 Cox, C. C. 594; 46 L. J., M. C. 259; 36 L. T. 476; 25 W. R. 697.

If, in an indictment for perjury against C. D., it is averred that a cause was depending between A. B. and C. D., a notice of set-off intitled in a cause A. B. v. C. D., and signed by the attorney of C. D., is not sufficient evidence to support the allegation. *Reg. v. Storey*, 6 C. & P. 489.

In an indictment for perjury committed on the trial of a former cause, the *postea* alone is sufficient evidence to prove that there was a trial, without shewing a copy of the final judgment. *Anon.*, Bull. N. P. 243.

An allegation in an indictment for perjury, that judgment was entered up in an action, is proved by the production of the book from the judgment office in which the incipitur is entered. *Reg. v. Gordon*, Car. & M. 410.

An indictment, tried before the Lord Chief Justice at Westminster, charged the perjury to have been committed on a trial at nisi prius, although at the King's Bench sittings at Westminster. The prosecutor, to prove the trial at nisi prius, put in the nisi prius record with the minute of the verdict indorsed on it by the associate. There was no *postea* drawn up, and the associate stated that none would be drawn up, as a rule for a new trial was pending:—Held, to be sufficient proof of the trial at nisi prius. *Reg. v. Browne*, 3 C. & P. 572; M. & M. 315.

In an indictment for perjury, it was averred that a suit was instituted in the Prerogative Court by C. against B., to dispute the validity of a codicil to a will:—Held, that the production of the original allegations of both parties in the suit, signed by their advocates, and proof of their advocates' signatures, and that they acted as advocates in that court, such allegations being produced from the registrar of the court, was sufficient proof of the averment, and that the caveat need not be produced. *Reg. v. Turner*, 2 C. & K. 732.

—That Issue Tried before Sheriff.]—In an indictment for perjury, on the trial of a cause under a writ of trial directed to the sheriffs of London, the oath is properly alleged to have been taken before the sheriffs, though, in fact, the cause was tried before the secondary. *Reg. v. Sehlesinger*, 10 Q. B. 670; 2 Cox, C. C. 200; 17 L. J., M. C. 29; 12 Jur. 283.

An indictment for perjury alleged the trial of

an issue before E. S., Esq., sheriff of D., by virtue of a writ directed to the sheriff; the writ of trial put in evidence was directed to the sheriff, and the return was of a trial before him; but it was proved, that, in fact, the trial took place before a deputy, not the under-sheriff:—Held, no variance. *Reg. v. Dunn*, 2 M. C. C. 297; 7 C. & P. 730.

Appeal to Quarter Sessions.]—On an indictment for perjury committed on the hearing of a parish appeal at the quarter sessions, the production of the sessions book is not sufficient proof that the appeal came on to be heard; and a regular record ought to be made upon parchment, the same as on a return to a certiorari, and that record, or an examined copy, must be produced. *Reg. v. Ward*, 6 C. & P. 366.

Indictment and Trial for Felony or Misdemeanor.]—By 14 & 15 Viet. c. 100, s. 22, a certificate containing the substance and effect only (omitting the formal part) of the indictment and trial for any felony or misdemeanor, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court where such indictment was tried, or by the deputy of such clerk or other officer (for which certificate a fee of 6s. 8d. and no more shall be demanded or taken), shall upon the trial of any indictment for perjury, or subornation of perjury, be sufficient evidence of the trial of such indictment for felony or misdemeanor, without proof of the signature or official character of the person appearing to have signed the same.

An allegation, that "on &c., at &c., a certain indictment was preferred at the quarter sessions of the peace then and there holden in and for the county of W., against the defendant and one T. E., which indictment was then and there found a true bill," is not supported by the production of the original indictment with the words "true bill" indorsed on it, it being necessary that a regular record should be drawn up and proved, either by its production or by an examined copy of it. *Porter v. Cooper*, 6 C. & P. 354.

On the trial of an indictment for perjury at the Central Criminal Court, to prove the fact of a former trial in the same court:—Held, that the production, by the officer of the court, of the caption, the indictment, with the indorsement of the prisoner's plea, the verdict, and the sentence of the court upon it, together with the minutes of the trial made by the officer in court, was sufficient evidence of it; and that the production of neither the record nor a certificate, under 14 & 15 Viet. c. 99, s. 13, and 14 & 15 Viet. c. 100, s. 22, was necessary. *Reg. v. Newman*, 3 C. & K. 240; 2 Den. C. C. 390; 5 Cox, C. C. 547; 21 L. J., M. C. 75; 16 Jur. 111.

On the trial of an indictment for perjury, committed on the hearing of an affiliation summons, under 7 & 8 Viet. c. 101, s. 2, it was proved that an information was duly made, which was put in evidence and read, and that the putative father appeared at the petty sessions, and that upon the hearing of the information the perjury assigned was committed. The summons was not produced, nor service of it proved, but in all other respects the proceedings on the hearing of the information were proved and appeared to have been regular:—Held, that it was not necessary that the summons should have been produced to sus-

tain a conviction for perjury on the above evidence. *Reg. v. Smith*, 1 L. R., C. C. 110; 37 L. J., M. C. 6; 17 L. T. 263; 16 W. R. 140; 11 Cox, C. C. 10.

On the trial of an indictment for perjury, it should be proved distinctly what the charge was on the hearing of which the false evidence was given. *Reg. v. Carr*, 10 Cox, C. C. 564; 17 L. T. 217; 16 W. R. 137.

Summonses before Justices or Police Magistrates.—A defendant was indicted for perjury alleged to have been committed by him on the hearing before justices of a summons charging him with being the father of an illegitimate child:—Held, that, to support the indictment, it was necessary to give evidence of the charge made by the mother, either by production of the original order made thereon, or by giving secondary evidence of the summons after notice to the defendant to produce it; and that, in the absence of such notice, it was not sufficient to produce the minutes of the proceedings by the clerk to the justices, those minutes being of no greater authority than the notes of a shorthand writer. *Reg. v. Newall*, 6 Cox, C. C. 21.

On the trial of an indictment for perjury, alleged to have been committed before magistrates, on the hearing of a case punishable on summary conviction, the conviction by the magistrates is not receivable in evidence, because it is irrelevant. *Reg. v. Goodfellow*, Car. & M. 569.

In an indictment for perjury before justices of the peace, there must be formal proof of the commencement of the proceedings by production of the summons, information, or the like. *Reg. v. Hurrell*, 3 F. & F. 271.

A. was indicted for wilful and corrupt perjury committed at the Westminster Police Court. A summons was granted upon an information, and upon the hearing of the summons the perjury assigned was committed. At the trial the information was produced, but not the summons:—Held, not sufficient; the summons should have been produced. *Reg. v. Whybrow*, 8 Cox, C. C. 438.

Examined Copy of Bill in Chancery.—An office copy of a bill in Chancery, which a witness examined with the original, but which office copy contained abbreviations, such as "pnl. este." for the words "personal estate" in the original bill, is not such an examined copy as will be evidence to support an allegation of a bill in Chancery on an indictment for perjury, committed in an affidavit in that suit in Chancery. *Reg. v. Christian*, Car. & M. 388.

Proof that Defendant Examined.—In an indictment, the supposed perjury arose upon evidence given in reply to the testimony of one of the defendants on the former trial, who was acquitted and examined as a witness. The indictment did not state his acquittal, nor did the minute of the verdict shew it:—Held, that this was immaterial, parol evidence being given that he was in fact examined. *Reg. v. Browne*, 3 C. & P. 572; M. & M. 315.

That Defendant was Sworn.—Proof that the defendant was "sworn and examined as a witness," supports an averment that he was sworn on the Holy Gospel, that being the ordinary

mode of swearing. *Reg. v. Rowley*, R. & M. 302. But see *Reg. v. McCarther*, Peake, 155.

Warrant of Attorney.—An allegation in an indictment for perjury, that the defendant made his warrant of attorney directed to R. W. and F. B., "then and still being attorneys" of K. B., is proved by putting in the warrant of attorney. *Reg. v. Cooke*, 7 C. & L. 559.

Probate of Will or Original.—In an indictment for perjury, it was alleged that A. made his will, and thereby appointed B. his executor: the production of the probate is the proper proof of this allegation; but if it had been necessary to prove that A. had devised real estates, the original will must have been produced, and one of the attesting witnesses called. *Reg. v. Turner*, 2 C. & K. 792.

Expressions of Malice.—To shew that perjury was wilful and corrupt, evidence may be given of expressions of malice used by the party towards the person against whom he gave the false evidence. *Reg. v. Muntion*, 3 C. & P. 491.

Partnership.—If A. is indicted for perjury, in swearing that he did not enter into a verbal agreement with B. and C. for them to become joint dealers and co-partners in the trade or business of druggists; and it appears that, in fact, B. was a druggist, keeping a shop with which A. had nothing to do; but that A. and C., being sworn brokers, could not trade, and therefore made speculations in drugs in B.'s name with his consent, he agreeing to divide profits and losses with A. and C.; this will not support the indictment, as this is not the sort of partnership denied by A. upon oath. *Reg. v. Tucker*, 2 C. & P. 500.

Proof that Averment was Material.—In an indictment for perjury, an express averment that a question was material lets in evidence to prove that it was so. *Reg. v. Bennett*, 3 C. & K. 124; 2 Den. C. C. 241; 5 Cox, C. C. 207; T. & M. 567; 20 L. J., M. C. 217; 15 Jur. 496.

Prosecution, when confined to Certain Cases.—

A., in an affidavit, stated that he had paid all the debts proved under his bankruptcy, except two, as to which he explained. On an indictment for perjury on this affidavit, one of the assignments of perjury was, that A. had not paid all the debts proved under his bankruptcy except two; and another, that certain creditors, naming them, besides the excepted two, were not paid in full:—Held, that if the first assignment was too general, the defendant should have demurred to it; and that, although by the generality of its form the prosecutor was not precluded from proving the non-payment of other creditors besides those named, yet, as names were stated in the other assignment, it was reasonable to presume that the defendant would suppose that they were the persons, the non-payment of whose debts was to be relied on; and that in fairness the prosecutor ought not to go into evidence of the non-payment of any other creditors than those named. *Reg. v. Parker*, Car. & M. 639.

Identity of Person Swearing Affidavit.—B. was indicted for perjury committed in an affidavit, alleged to have been made by him in order to obtain a marriage licence. The evi-

dence shewed that some person went to the vicar-general's office, and gave certain instructions, in accordance with which an affidavit was filled up by one of the clerks, which, after having been read over to the applicant, was signed by him. B.'s father proved that the signature to the affidavit was in his son's handwriting. The custom of the vicar-general's office was for the clerk who filled up the affidavit to go with the applicant, and get him to swear to it before a surrogate. Neither the clerk in the vicar-general's office, nor the surrogate, could identify B. as having sworn to the affidavit, and, although the clergyman who married B. recognized him as being the person who was married under the licence granted on the strength of the affidavit signed by him, yet he did not receive it from him on the day of the marriage, but he received it on the previous day from the verger of his church:—Held, that further proof of the identity of the person who swore to the affidavit with the person who signed it was necessary before B. could be convicted of perjury assigned on a false statement contained in it. *Reg. v. Barnes*, 10 Cox, C. C. 539.

In Case of Affidavits.]—F. was indicted for perjury, committed by deposing to an affidavit in a cause wherein he was the plaintiff, and E. the defendant, that he owed him 50*l.*:—Held, that, in support of this indictment, evidence was not admissible, that the cause of F. against E. was, after the making of the affidavit, referred by consent, and an award made that E. owed nothing to F. *Reg. v. Moreau*, 11 Q. B. 1028; 17 L. J., Q. B. 187; 12 Jur. 626.

In perjury, the affidavit of service of notice or application for leave to issue execution against a shareholder in a joint stock company is insufficient evidence not having the notice annexed to it. *Reg. v. Hudson*, 1 F. & F. 56.

In perjury committed in an answer in Chancery, it is sufficient proof of the fact of swearing and the identity of the defendant, to prove the handwriting subscribed to the answer, and that the jurat was subscribed by the master as being sworn before him. *Reg. v. Morris*, 1 Leach, C. C. 50. *S. P., Reg. v. Benson*, 2 Camp. 508; *Reg. v. Morris*, 2 Burr. 1189.

On an indictment for perjury, in an answer to a bill in Chancery, the proving the handwriting of the signature of the person who administered the oath, is sufficient proof that it was sworn; and if the place at which such answer purported to have been sworn is in the jurat, it is sufficient evidence that the oath was administered at that place. *Reg. v. Spencer*, 1 C. & P. 260; R. & M. 97.

A person cannot be convicted of perjury on an affidavit, if it refers to a former affidavit, which the prosecutor is not in a condition to prove. *Reg. v. Hailey*, 1 C. & P. 258; R. & M. 94.

On an indictment for perjury, setting forth, with proper innuendoes, a copy of a deposition before a magistrate, written in the English language, and signed by the defendant, he may be convicted on proof of a verbal deposition in the Welsh language, of which the written deposition, signed by him, is the substance. *Reg. v. Thomas*, 2 C. & K. 806.

Who must prove False Statement.]—A person may be indicted for perjury who gives false evidence before a grand jury when examined as a

witness before them upon a bill of indictment; and another witness on the same indictment, who is in the grand jury-room while such person is under examination, is competent to prove that such witness swore before the grand jury; and so is a police-officer, who was stationed within the grand jury-room door, to receive the different bills at the door, and take them to the foreman of the grand jury; these persons not being sworn to secrecy, although the grand jury is so. *Reg. v. Hughes*, 1 C. & K. 519.

On an indictment for perjury, alleged to have been committed at the quarter sessions, the chairman at the quarter sessions ought not to be called upon to give evidence as to what the defendant swore at the quarter sessions. *Reg. v. Gizard*, 8 C. & P. 595.

In support of an indictment for perjury, committed on the trial of a plaintiff in a county court, it is not necessary to produce the judge's notes, if proof of the perjury can be established by witnesses who were present at the trial. *Reg. v. Morgan*, 6 Cox, C. C. 107.

The notes of evidence taken by a judge on a trial are not admissible in evidence to prove what was said on that trial. When, therefore, on a trial for perjury, alleged to have been committed by the defendant as a witness on a trial for felony before a Queen's counsel assisting the judges, and his notes of the evidence given on that occasion were tendered (on proof of his handwriting):—Held, that such notes were not admissible. *Reg. v. Child*, 5 Cox, C. C. 197.

Defendant cannot shew that abandoned Count was True.]—If an indictment contains several assignments of perjury, on one of which no evidence is given on the part of the prosecution, the defendant cannot go into proof to shew that the evidence charged by that assignment of perjury to be false, was in reality true. *Reg. v. Hemp*, 5 C. & P. 468.

Questions to Witnesses to Character.]—On the trial of an indictment for perjury the witnesses to character were asked, "What is the character of the defendant for veracity and honour?"—and "Do you consider him a man likely to commit perjury?" *Id.*

What Evidence admissible.]—On the trial of an indictment for perjury, alleged to have been committed on the trial of an indictment for an assault, all the evidence that was admissible on the trial of the indictment for the assault is admissible on the trial of the indictment for perjury. *Reg. v. Harrison*, 9 Cox, C. C. 503.

Declarations in articulo mortis are not admissible in evidence on the trial of an indictment for perjury. *Reg. v. Mead*, 4 D. & R. 120; 2 B. & C. 605.

Admissions.]—On the trial of an indictment for perjury on the crown side of the assizes, where it appeared that the attorneys on both sides had agreed that the formal proofs should be dispensed with, and that part of the prosecutor's case should be admitted, the judge would not allow this admission. *Reg. v. Thornhill*, 8 C. & P. 574.

A judge will not allow a criminal case upon the crown side of the assizes to be tried on admissions, unless they are made at the trial by the defendant or his counsel. *Id.*

U

—**Statements Made at Trial of Election Petition.**—By 26 Vict. c. 29, s. 7, witnesses before commissioners for inquiring into the existence of corrupt practices at elections shall not be excused from answering questions on the ground that the answers thereto may criminate them, and "that no statement made by any person in answer to any question put by such commissioners shall, except in cases of indictment for perjury, be admissible in evidence in any proceeding, civil or criminal:"—Held, that "except in cases of indictment for perjury" applies only to perjury committed before the commissioners, and, therefore, on an indictment for perjury committed at the trial of an election petition, evidence of answers to commissioners appointed to inquire into the existence of corrupt practices at the election in question is not admissible. *Reg. v. Buttle*, 1 L. R., C. C. 248; 39 L. J., M. C. 115; 22 L. T. 728; 18 W. R. 956.

By s. 7 of the Corrupt Practices Prevention Act, 1863, no person summoned as a witness before any commissioners appointed under the Corrupt Practices Acts shall be excused from answering any question relating to corrupt practices forming the subject of inquiry on the ground that the answer would tend to criminate himself, "provided that no statement made by any person in answer to any question put by or before such commissioners shall, except in cases of indictments for perjury, be admissible in evidence in any proceeding, civil or criminal:"—Held, that the exception in the proviso did not apply to an ex-officio information by the attorney-general for perjury. *Reg. v. Slaton*, 8 Q. B. D. 267; 51 L. J., Q. B. 246; 30 W. R. 410; 46 J. P. 694.

Documents—Secondary Evidence.—A solicitor was indicted for perjury in having sworn that there was no draft of a certain statutory declaration made by a client. No notice to produce the draft had been given to the solicitor, and upon his trial it was proved to have been last seen in his possession. Secondary evidence having been given of its contents:—Held, that, in the absence of such notice, secondary evidence was inadmissible. *Reg. v. Elworthy*, 1 L. R., C. C. 103; 37 L. J., M. C. 3; 17 L. T. 293; 16 W. R. 207; 10 Cox, C. C. 579.

Where perjury is assigned upon a written instrument, subsequently lost, secondary evidence is admissible. *Reg. v. Milnes*, 2 F. & F. 10.

When perjury is alleged as having been committed before justices at petty sessions on the hearing of a charge contained in a written information, that information must be produced, or its loss or destruction proved, before secondary evidence of its contents can be given on the trial of an indictment for perjury. *Reg. v. Dillon*, 14 Cox, C. C. 4.

ii. Number of Witnesses and Corroboration.

What required.—The evidence of one witness is not sufficient to convict of perjury, as there would be only one oath against another. *Reg. v. Lee*, 3 Russ. C. & M. 78; *S. P., Champney's case*, 2 Lewin, C. C. 258.

But two witnesses are not essentially necessary to disprove the fact sworn to; for, if any

material circumstance is proved by other witnesses in confirmation of the witness who gives the direct testimony of perjury, it may turn the scale and warrant a conviction. *Id.*

And the rule does not apply where the evidence consists of the contradictory oath of the party accused. *Reg. v. Knill*, 5 B. & A. 929, n.

To prove perjury, it is sufficient if the matter alleged to be falsely sworn is disproved by one witness, if, in addition to the evidence of that witness, there is proof of an account, or a letter written by the defendant contradicting his statement on oath. *Reg. v. Mayhew*, 6 C. & P. 315.

A., in an affidavit, stated that he had paid all the debts proved under his bankruptcy, except two, as to which he explained; in support of an indictment for perjury upon that affidavit several creditors were called, who each proved the non-payment of his own debt:—Held, that this was not sufficient to warrant a conviction, and that as to the non-payment of each debt, it was necessary to have the evidence of two witnesses, or of one witness, and such corroborative testimony as is equal to the testimony of a second witness. *Reg. v. Parker*, Car. & M. 639.

The rule, that the testimony of a single witness is not sufficient to sustain an indictment for perjury, is not a mere technical rule, but a rule founded on substantial justice; and evidence confirmatory of that one witness in some slight particulars only, is not sufficient to warrant a conviction. *Reg. v. Yates*, Car. & M. 132; 5 Jur. 636.

Although an assignment of perjury must be proved by two witnesses, it is not necessary to prove by two witnesses every fact which goes to make out the assignment of perjury. *Reg. v. Roberts*, 2 C. & K. 607.

A., to prove an alibi for B., had sworn that B. was not out of his sight between the hours of 8 A.M. and 9 A.M. on a certain day, and on this perjury was assigned. Proof by one witness, that between those hours A. was at one place on foot, and by another witness, that between those hours B. was walking at another place six miles off:—Held, to be sufficient proof of the assignment of perjury. *Id.*

Where perjury was assigned upon a statement made by the prisoner on oath, upon a trial at nisi prius, that in June, 1851, he owed no more than one quarter's rent to his landlord, and the prosecutor swore that the prisoner owed five quarters' rent at that date; and to corroborate the prosecutor's evidence, a witness was called, who proved that in August, 1850, the prisoner had admitted to him that he then owed his landlord three or four quarters' rent:—Held, first, that this was not such corroboration as is necessary to sustain an indictment for perjury. *Reg. v. Boulter*, 3 C. & K. 236; 2 Den. C. C. 396; 5 Cox, C. C. 543; 21 L. J., M. C. 57; 16 Jur. 135.

Held, secondly, that two witnesses are not essentially necessary to contradict the oath on which the perjury is assigned, but that there must be something more than the oath of one, to shew that one party is more to be believed than the other. *Id.*

To support an indictment for perjury there must be something proved in the case for the prosecution, making the oath of the prosecutor preferable to that of the defendant; there need not be two distinct oaths, as one oath and circumstances may be sufficient. *Id.*

Although it is not necessary that the alleged

perjury should be proved by two witnesses in contradiction of the prisoner, it is requisite that the perjury should be proved by something more than the mere contradictory oath of the prosecutor. He must be corroborated by some independent testimony. *Reg. v. Braithwaite*, 8 Cox, C. C. 254; 1 F. & F. 638.

A party was charged with having falsely sworn that certain invoices bearing certain dates were produced by her to C. The only witness called was C., who swore that she had not produced those invoices, but that she had produced others of the dates of which he made a memorandum at the time:—Held, that the memorandum was a sufficient corroboration upon which to convict. *Reg. v. Webster*, 1 F. & F. 515.

The prisoner was convicted of perjury. He was a policeman, having laid an information against a publican for keeping open his house after lawful hours, and swore, on the hearing, that he knew nothing of the matter except what he had been told, and that "he did not see any person leave the defendant's house after eleven" on the night in question. The perjury was assigned on this last allegation, and the evidence to prove its falsehood was, that the prisoner when laying the information, said that "he had seen four men leave the house after eleven," and that he could swear to one as W. On two other occasions the prisoner made a similar statement to two other witnesses; and W. and others did, in fact, leave the house after eleven o'clock on the night in question; that on the hearing the prisoner acknowledged that he had offered to smash the case for 30s.; that he had talked, in the presence of another witness, of making the publican give him money to settle it; and he had, in fact, offered to the publican to settle it for 17., and had said that he had received 10s. to smash the case, and was to have 10s. more:—Held, that the evidence was sufficient to prove the perjury assigned, and that the conviction was right. *Reg. v. Hook*, Dears. & B. C. C. 606; 8 Cox, C. C. 5; 27 L. J., M. C. 222; 4 Jur., N. S. 1026.

In a case of perjury, on a charge of bestiality, the defendant swore that he saw the prosecutor committing the offence, and saw the flap of his trousers unbuttoned. To disprove this, the prosecutor deposed that he did not commit the offence, and that his trousers had no flap; and, to confirm him, his brother proved, that, at the time in question, the prosecutor was not out of his presence for more than three minutes, and his trousers had no flap:—Held, to be sufficient corroborative evidence to go to the jury. *Reg. v. Gardiner*, 8 C. & P. 737.

An assignment of perjury that the prosecutor did not, at the time and place sworn to, or at any other time or place, commit bestiality with a donkey (as sworn to) or with any other animal whatsoever, is sufficiently proved by the evidence of two witnesses falsifying the deposition which had been sworn to by the defendant. *Id.*

The prisoner was charged with perjury, for having falsely sworn before magistrates at petty sessions, that D. R. was the father of her illegitimate child. At the trial of the prisoner the imputed father, D. R., swore that he never had intercourse with her. In corroboration of D. R., a witness was called who swore that the prisoner had told witness, at a time when she generally denied being with child, that "D. R. had never touched her clothes":—Held, that, as the nega-

tion was made by the prisoner at a time when she generally denied being with child, it was, so far a part of such general denial that, although it could not be altogether withdrawn from the jury, it was not a corroboration of D. R.'s testimony, on which alone they could convict her. *Reg. v. Owen*, 6 Cox, C. C. 105.

When an assignment of perjury was in the vague terms that the defendant falsely swore that he had not treated a certain person to brandy, &c., on a certain day, instead of in the definite terms, that he had not treated him at a particular public-house on a certain day:—Held, that proof of treating at two public-houses by two distinct witnesses was sufficient to support a conviction, because any witness of a treating at a separate time and place on the same day, was sufficient corroboration of the witness who spoke only to one act of treating. *Reg. v. Hare*, 13 Cox, C. C. 174.

A person in his deposition before a magistrate deposed to several material facts in a case of larceny. When called as a witness at the quarter sessions on the trial of the larceny, he contradicted every statement he had made before the magistrate. In an indictment for perjury, his evidence on the trial at the quarter sessions was charged to be false:—Held, that the deposition before the magistrate was not, by itself, sufficient proof that the evidence on the trial at the quarter sessions was false, but that other confirmatory evidence must be given, to satisfy the jury that the statements made by the party at the quarter sessions were, in point of fact, false, or that the statements in the deposition were in point of fact, true. *Reg. v. Wheatland*, 8 C. & P. 238.

To convict a person of perjury in swearing falsely before a grand jury, it is not sufficient to shew that the person swore to the contrary before the examining magistrate, as non constat which of the contradictory statements was the true one. *Reg. v. Hughes*, 1 C. & K. 519.

d. Trial.

Jurisdiction.—A judge at nisi prius has no jurisdiction to try an indictment for perjury at common law, found at the quarter sessions, and removed by certiorari into K. B.; an indictment so found being void. *Rev. v. Haines*, R. & M. 298.

Venue on Removal of Indictment from Central Criminal Court.—By 9 & 10 Vict. c. 24, s. 3, every writ of certiorari for removing an indictment from the Central Criminal Court shall specify the county or jurisdiction in which the same shall be tried, and a jury shall be summoned and the trial proceed in the same manner in all respects as if the indictment had been originally preferred in that county or jurisdiction. An indictment was found by the grand jury in the Central Criminal Court for perjury committed within the jurisdiction of the Central Criminal Court. The perjuries assigned in one count were in respect of an oath taken before a commissioner in chancery, in the city of London; and in the other count, in respect of an oath taken in the court of Common Pleas, in Middlesex. The indictment was removed by certiorari into the court of Queen's Bench, and Middlesex was specified as the county in which the indictment should be tried, and the jury was taken from that county:—Held, that the court of Queen's Bench

had a discretion to name in the certiorari the county or jurisdiction in which the trial was to take place, and that by the jurors summoned from that jurisdiction the same issues could be tried that would have been tried in the Central Criminal Court had the indictment not been removed. *Reg. v. Castro*, 9 L. R., Q. B. 350; 43 L. J., Q. B. 105; 30 L. T. 320; 22 W. R. 187; 12 Cox, C. C. 454.

Practice where Suit Undetermined.]—It is the practice of the Central Criminal Court not to try an indictment for perjury arising out of a civil suit, while that suit is any way undetermined, except in cases where the court in which it is pending postpones the decision of it in order that the criminal charge may be first disposed of. *Rear v. Ashburn*, 8 C. & P. 50. See *Peddell v. Rutter*, 8 C. & P. 340.

Verdict—Several Counts.]—An indictment contained four counts, each of which stated practically the same offence. The record stated the writ of venire to try whether the defendant “be guilty of the perjury and misdemeanor aforesaid,” and the verdict, that “he is guilty of the perjury and misdemeanor aforesaid,” and a general judgment thereon:—Held, that the word “misdemeanor” was *nomen collectivum*; and that, therefore, venire and verdict applied to all the counts; and the judgment, being for imprisonment only, was divisible. *Ryalls v. Reg. (in error)*, 11 Q. B. 781; 3 Cox, C. C. 354; 18 L. J., M. C. 69; 13 Jur. 259.

Punishment—Penal Servitude.]—The 2 Geo. 2, c. 25, s. 2, imposes the sentence of transportation (altered to penal servitude) on persons convicted of perjury according to the laws then in being. A person was convicted of perjury on an indictment, one count of which averred that the oath was taken in the Court of Chancery before a commissioner authorized to take oaths by 16 & 17 Vict. c. 78; he was sentenced to penal servitude upon that count:—Held, that the offence of perjury consists in taking a false oath in a judicial proceeding, and whether the oath is taken in a judicial proceeding before a court of common law, or acting under a statute, it is equally an oath taken in a judicial proceeding, and punishable by penal servitude. *Reg. v. Castro*, 9 L. R., Q. B. 350; 43 L. J., Q. B. 105; 30 L. T. 320; 22 W. R. 187; 12 Cox, C. C. 454.

— Sentence — Punishment before Penal Servitude need not be Given.]—The 2 Geo. 2, c. 25, s. 2, authorizes the judge before whom a person shall be convicted of perjury, to order such person to be sent to a house of correction for seven years, there to be kept to hard labour; “and thereupon judgment shall be given that the person convicted shall be committed accordingly, over and beside such punishment as shall be adjudged to be inflicted upon such person, agreeable to the laws now in being:”—Held, that this statute did not impose on the court the necessity of awarding any punishment previous to that of penal servitude, so as to give the sentence of penal servitude the form of an additional punishment. *Castro v. Reg.*, 6 App. Cas. 229; 50 L. J., Q. B. 497; 44 L. T. 350; 29 W. R. 669; 45 J. P. 452; 14 Cox, C. C. 546—H. L. (E.)

— Two Counts—Second Term of Imprisonment beginning at Expiration of First.]—An indictment for perjury contained two counts, charging perjury to have been committed by the defendant on two different occasions, one in the progress of a trial, the other in an affidavit in chancery:—Held, that they were distinct offences, and a punishment might be inflicted in respect of each. *Id.*

That the full punishment of seven years' penal servitude might be inflicted for each offence, and that the second term of penal servitude was properly made to begin at the termination of the first term. *Id.*

2. FALSE DECLARATIONS.

a. Customs.

Making false declarations in matters relating to the customs, see 16 & 17 Vict. c. 107, s. 198, and 18 & 19 Vict. c. 96, s. 38.

b. On Registration of Voters and at Parliamentary Elections.

Statute.]—By 28 & 29 Vict. c. 36, s. 10, *persons changing their abodes before the last day of July in any year, and objected to, may make declarations as to the true place of their abodes and qualification, for the purpose of being registered as voters, and, by s. 11, persons falsely signing such declarations, will be guilty of a misdemeanor, punishable by fine or imprisonment for a term not exceeding one year.*

Allegations in Indictment are for the Court to Decide upon.]—An indictment for wilfully making a false answer to a third question put to a party tendering his vote at an election of members of parliament, in pursuance of 2 & 3 Will. 4, c. 45, s. 58, had been removed by certiorari. At the trial, several objections were taken, grounded on the omission of proper allegations in the indictment:—Held, that being on the record, they should be left to the decision of the court. *Reg. v. Bowler*, Car. & M. 559; 6 Jur. 287.

By whom Questions are Asked.]—On an indictment under 2 & 3 Will. 4, c. 45, s. 58, for giving a false answer at the poll at an election of members of parliament for a borough, it is not essential that the returning officer should himself put the three questions to the voters under s. 53, it is sufficient if the town clerk does it in his presence, and by his direction; neither is it necessary to shew that the agent who required the questions to be put was expressly appointed by the candidate; it is sufficient to shew that he has acted as agent for the candidate. *Reg. v. Spalding*, Car. & M. 568.

Part Omitted.]—A voter having changed his residence since the last registration, cannot be indicted under 2 & 3 Will. 4, c. 45, for swearing that he has still the same qualification, if the sheriff's deputy should omit, at the time the voter tenders his vote, to read over to him the specific qualification from the register. *Reg. v. Lucy*, Car. & M. 511.

Same Qualification.]—The words, “the same qualification” mean that the voter must, at the

time of the election, be in possession of the identical qualification in respect of which he was registered. It is not enough if he possesses premises of a similar description. *Reg. v. Dodsworth*, 8 C. & P. 218; 2 Jur. 131.

Must be Made Wilfully.—If a person knew that at the time of polling he gave a false answer as to his having the same qualification as at the time of registration, it would be no defence to an indictment for that offence, that he acted under the advice of an electioneering committee; but if, possessing property of equal value with that for which he was registered, he acted *bonâ fide*, and under an impression that he was entitled to vote, he ought to be acquitted. *Id.*

The word wilfully, in an indictment on the 2 & 3 Will. 4, c. 45, s. 58, for giving a false answer at the poll, should be construed in the same way as in an indictment for perjury, and be supported by the same sort of evidence. *Reg. v. Ellis*, Car. & M. 564; 6 Jur. 287.

Evidence.—Where an averment states the words of the affirmative answer, they must be proved as alleged. *Reg. v. Bowler*, Car. & M. 559; 6 Jur. 287.

—**Proof of Register.**—On an indictment against a voter for making a false declaration as to his possession of the same qualification, under 2 & 3 Will. 4, c. 45, s. 58, a copy of the original register, made according to s. 55, may be received in evidence; and it is sufficient if it resembles the original in respect of the voter's name and description. *Reg. v. Dodsworth*, 8 C. & P. 218; 2 Jur. 131.

—**Sufficiency.**—Upon an indictment, in falsely taking the freeholder's oath at an election of a knight of the shire in the name of J. W.; it appearing by competent evidence that the freeholder's oath was administered to a person who polled on the second day of the election in the name of J. W., who swore to his freehold and place of abode, and that there was no such person; and that the defendant voted on the second day, and was no freeholder, and some time after boasted that he had done the trick, and was not paid enough for the job, and was afraid he should be pulled up for his bad vote; and it not appearing that more than one false vote was given on the second day's poll, or that the defendant voted in his own name, or in any other than the name of J. W. —Held, that there was sufficient evidence for the jury to presume that the defendant voted in the name of J. W., and consequently to find him guilty of the charge as alleged in the indictment. *Reg. v. Price*, 6 East, 323; 2 Smith, 525. And see *Reg. v. Leeffe*, 2 Camp. 139; and *Purcell v. McNamara*, 9 East, 157.

c. Municipal Elections.

By 45 & 46 Vict. c. 50, s. 59 (which repeals 5 & 6 Will. 4, c. 76, s. 34), if any person wilfully makes a false answer to any of the questions required by this section he shall be guilty of a misdemeanor.

Wilfully.—An indictment upon 5 & 6 Will. 4, c. 76, s. 34, for giving a false answer on voting for a town councillor, is bad, if it does not allege that the defendant wilfully gave the false

answer. *Reg. v. Bent*, 2 C. & K. 179; 1 Den. C. C. 157.

Where a count alleged that the prisoner falsely, fraudulently and deceitfully personated a burgess at an election of councillors for a borough:—Held, no offence under this section or at common law. *Id.*

Untruly Answering—Son same Name as Father.—The son of a burgess, of the same name as his father, living in the house in respect of which the father had been qualified, but the father having for some time been absent, and the son paying the rates, is not indictable for untruly answering the questions put to voters upon his voting. *Reg. v. Goodman*, 1 F. & F. 502.

d. Before Magistrates.

Loss by Fire—Benefit Society.—An indictment on 5 & 6 Will. 4, c. 62, s. 13, for making a false declaration before a magistrate, stated, that, by the rules of a benefit society, any full free member of it who sustained a loss by an accidental fire was to be indemnified to the extent of 15*l.*, on making a declaration before a magistrate verifying his loss; and that the defendant was a full free member of the society, and had made a false declaration before a magistrate, that he had sustained a loss by fire. On the trial, the rules of the society could not be proved; but held, that the allegation in the indictment respecting the rules might be rejected as surplusage, as the offence of the defendant, in making the false declaration as to the fire, would be an offence within the statute, if no such benefit society had ever existed. *Reg. v. Boynes*, 1 C. & K. 65.

Voluntary Oaths — Powers to Administer.—A county magistrate complained to the bishop of the diocese of the conduct of two of his clergy; and to substantiate his charge he swore witnesses before himself, as magistrate, to the truth of the facts:—Held, that the matter before the bishop was not a judicial proceeding, and therefore that the magistrate had brought himself within the 5 & 6 Will. 4, c. 62, s. 13; and that he had unlawfully administered voluntary oaths, contrary to the enactment of the statute. *Reg. v. Vott*, Car. & M. 288; D. & M. 1; 4 Q. B. 768; 12 L. J., M. C. 143.

The 5 & 6 Will. 4, c. 62, s. 18, which enables magistrates to receive voluntary declarations instead of oaths, extends to declarations generally, and is not confined to declarations with respect to the confirmation of written instruments or allegations, or proofs of debts, or of the execution of deeds, or other matters ejusdem generis. *Reg. v. Boynes*, 1 C. & K. 65.

Indictment.—An indictment charging A. with having made a false declaration before a justice that he had lost a pawnbroker's ticket, whereas he had not lost the ticket, but "had sold, lent or deposited it with one" C., is not bad for uncertainty, because the words "had sold, lent or deposited it" are mere surplusage, and therefore an error in them does not affect the indictment. *Reg. v. Parker*, 1 L. R., C. C. 225; 39 L. J., M. C. 60; 21 L. T. 724; 18 W. R. 358.

An indictment under 5 & 6 Will. 4, c. 62, s. 13, for administering an extra-judicial oath, is bad, if it does not so far set out the deposition, that

the court may judge whether or not it is of the nature contemplated by the statute. *Reg. v. Vott*, 4 Q. B. 768; 9 Cox, C. C. 301; D. & M. 1; 12 L. J., M. C. 143; 7 Jur. 621.

Evidence.—To prove the making of a false declaration under the Pawnbrokers' Act (39 & 40 Geo. 3, c. 99) it is not absolutely necessary to call the magistrate before whom it was made or some one present at the time. *Reg. v. Browning*, 3 Cox, C. C. 437.

To prove that such a declaration is false in fact, it is necessary to negative the defendant's statement by the oath of two witnesses in the same manner and to the same extent as on the proof of an assignment for perjury. *Id.*

Where a person is indicted for having made a false declaration as to a fire having taken place at his house, evidence may be given, that, with the declaration, he sent a certificate, which stated the fire to have occurred, and that the signatures to that certificate were all forgeries, as this evidence may go to shew that the declaration was wilfully false. *Reg. v. Boynes*, 1 C. & K. 65.

An indictment for perjury in making a false declaration under 5 & 6 Will. 4, c. 62, s. 18, cannot be sustained when the deed or written instrument of which the declaration is confirmatory is not duly proved. *Reg. v. Coe*, 4 F. & F. 42.

c. On Registration of Births, Deaths or Marriages.

False Statements and Entries.—An indictment, under 6 & 7 Will. 4, c. 86, s. 41, charged, that a clergyman solemnized a marriage and was about to register in duplicate the particulars relating to the marriage, and that the prisoner did wilfully make to the clergyman, for the purpose of being inserted in the register of marriage, certain false statements.¹ The proof was that the particulars were entered by the clerk of the church before the marriage; that, after the marriage, the clergyman asked the prisoner if they were correct, and that he answered in the affirmative, and the clergyman signed the register:—Held, that the prisoner was rightly convicted. *Reg. v. Brown*, 2 C. & K. 504; 1 Den. C. C. 291; 3 Cox, C. C. 127; 17 L. J., M. C. 145.

Held, also, that it was not necessary, upon the indictment, to prove that the register books used by the clergyman were furnished to him by the registrar-general. *Id.*

The 6 & 7 Will. 4, c. 86, s. 41, makes it a misdemeanor to make a false statement of one or more of the particulars required to be registered for the purpose of being inserted in any register of births, deaths or marriages; and to constitute this offence, the purpose need not be effected. *Reg. v. Mason*, 2 C. & K. 622.

But it is a felony, under s. 43, to cause the registrar to make an entire false entry of a birth, marriage or death. *Id.*

A woman went to a registrar, and asked him to register the birth of a child; she stated to him the particulars necessary for the entry, and he made the entry accordingly, and she signed it as the person giving the information. Every particular which she stated was false:—Held, that this amounted to the felony of causing a false entry to be made within 6 & 7 Will. 4, c. 86, s. 43, and was not merely the misdemeanor of making a false statement under s. 41. *Reg. v. Dewitt*, 2 C. & K. 905; 4 Cox, C. C. 49.

Wilfully made.—To support an indictment on 6 & 7 Will. 4, c. 86, s. 41, for making a false statement touching the particulars required to be registered for the purpose of their being inserted in a register of marriages, it is essential that the false statement should have been made wilfully and intentionally, and not by mistake only. *Reg. v. Dunboyne (Lord)*, 3 C. & K. 1.

Use of New Name.—A man may change his surname by use and reputation, and if by use and reputation he has acquired a new name, he is not indictable under 19 & 20 Vict. c. 19, s. 2, for using a new name in signing a notice for the purpose of procuring his marriage under 6 & 7 Will. 4, c. 85. *Reg. v. Smith*, 4 F. & F. 1099.

3. UNLAWFUL OATHS.

Unlawful Oaths—What are.—The provisions of 37 Geo. 3, c. 123, which make it a felony to administer an unlawful oath, are not confined to oaths administered with either a mutinous or a seditious object. *Rea v. Brodribb*, 6 C. & P. 571.

A party of sixteen persons was going out armed for the purpose of night-poaching. Before they went out the prisoner swore them all to secrecy:—Held, a felony within that statute. *Id.*

If the oath administered was intended to make the parties to whom it was administered believe themselves under an engagement, it is equally within the statute whether the book on which they were sworn was a Testament or not. *Id.*

Where an oath was administered, that the party taking it should not make buttons under certain stated prices, and should keep all the secrets of the lodge:—Held, to be an administering of an unlawful oath within the statutes. *Rea v. Ball*, 6 C. & P. 563.

The administering an oath or any agreement to any person not to reveal the secrets of any association, is an offence within those statutes. *Id.*

An association, the members of which are bound by oath not to disclose its secrets, is an unlawful combination and confederacy (unless expressly declared by some act of parliament to be legal), for whatever purpose or object it may be formed; and the administering of an oath not to reveal anything done in such association is an offence within 37 Geo. 3, c. 123, s. 1. *Rea v. Lovelass*, 6 C. & P. 596; 1 M. & Rob. 349.

The precise form in which the oath is administered is not material; it is an oath within the meaning of the act, if it was understood by the party tendering, and the party taking it, as having the force and obligation of an oath. *Id.*

Every person who engages in an association, the members of which, in consequence of being so, take an oath not required by law, is guilty of an offence within 57 Geo. 3, c. 19, s. 25. *Rea v. Dixon*, 6 C. & P. 601.

The unlawful administering, by any associated body of men, of an oath to any person, purporting to bind him not to reveal or discover such unlawful combination or conspiracy, nor any illegal act done by them, is felony within the 37 Geo. 3, c. 123, though the object of such association was a conspiracy to raise wages and make regulations in a certain trade, and not to

stir up mutiny or sedition. *Reg. v. Marks*, 3 East, 157.

Indictment.—Where sixteen persons took the same unlawful oaths, two or three at a time, all being present:—Held, that the person who administered the oath might be convicted on an indictment for administering a certain oath to A., B., C., D., &c. (naming the whole sixteen persons). *Reg. v. Brodribb*, 6 C. & P. 571.

If the indictment states the oaths to have been, not to inform, or give evidence against any person belonging to a confederacy of persons associated together to do a certain illegal act, this is sufficient, without stating what the illegal act was. *Id.*

By 37 Geo. 3, c. 123, s. 4, it shall not be necessary, in an indictment for any offence under this statute, to set forth the words of the oath, but it shall be sufficient to set forth the purport of it, or some material part thereof. An indictment charging that the defendants administered to J. H. an oath, intended to bind him not to inform or give evidence against any member of a certain society formed to disturb the public peace, for any act or expression of his or theirs, is good, without alleging the tenor or purport of the oath to be set forth, and without shewing in what manner the public peace was meant to be disturbed by such society. *Reg. v. Moore*, 6 East, 419.

Evidence.—Where the witness, swearing to the words spoken by way of oath by the prisoner when he administered the same, said that he held a paper in his hand at the same time when he administered the oath, from which it was supposed that he read the words; yet held, that parol evidence of what he in fact said, was sufficient, without giving him notice to produce such paper. *Id.*

XXIX. PERSONATION.

1. *Stockholders.*
2. *Seamen and Soldiers.*
3. *Voters.*
4. *In other Cases.*

1. STOCKHOLDERS.

Statute.—By 24 & 25 Vict. c. 98, s. 3, *whosoever shall falsely and deceitfully personate any owner of any share or interest of or in any stock, annuity, or other public fund which now is or hereafter may be transferable at the Bank of England or at the Bank of Ireland, or any owner of any share or interest of or in the capital stock of any body corporate, company or society which now is or hereafter may be established by charter, or by, under or by virtue of any act of parliament, or any owner of any dividend or money payable in respect of any such share or interest as aforesaid, and shall thereby transfer or endeavour to transfer any share or interest belonging to any such owner, or thereby receive or endeavour to receive any money due to any such owner, as if such offender were the true and lawful owner, shall be guilty of felony.* (Former provision, 11 Geo. 4 & 1 Will. 4, c. 66, s. 6.)

What is.—Obtaining and indorsing a dividend warrant at the bank in the name of a stock-

holder is "personating a proprietor, and thereby endeavouring to receive the dividend," although no attempt whatever is made to receive the money at the pay-office. *Reg. v. Parr*, 1 Leach, C. C. 434; 2 East, P. C. 1005.

Of Owners of Bank Stock.—See 33 & 34 Vict. c. 58, s. 4.

2. SEAMEN AND SOLDIERS.

Of Person really Entitled to Money.—Under 31 Geo. 2, c. 10, the personating must be of some existing person entitled, or who *prima facie* might be entitled, to receive the wages. *Reg. v. Brown*, 2 East, P. C. 1007.

To constitute the offence of personating the name of a seaman under 57 Geo. 3, c. 127, s. 4, the person entitled, or really supposed to be entitled to prize-money, must be personated; personating a man who never had any connexion with the ship is not an offence within the act. *Reg. v. Tannet*, R. & R. C. C. 351.

Where Person Entitled Dead.—Where a prisoner personated one S. Cuff, who was dead, and whose prize-money had been paid to his mother:—Held, that it did not vary the prisoner's guilt; and that he might be convicted on 54 Geo. 3, c. 93, s. 89. *Reg. v. Cramp*, R. & R. C. C. 327; *S. P., Reg. v. Pringle*, 9 C. & P. 408; 2 M. C. C. 127.

The prisoner applied at Greenwich Hospital for prize-money in the name of J. B.; J. B. was dead, and was supposed to be so at the hospital, and the prisoner did not obtain the money. On an indictment for personating:—Held, that the 54 Geo. 3, c. 93, s. 89, applied, although the seaman was dead. *Reg. v. Martin*, R. & R. C. C. 324.

What Persons Guilty of Offence.—All persons aiding and abetting the personating a seaman entitled to allowance-money are principals, and the offence is not confined to the person only who personates the seaman. *Reg. v. Potts*, R. & R. C. C. 333.

On an indictment under 2 Will. 4, c. 53, s. 49, two persons were charged, one as having falsely personated a soldier entitled to prize-money, and the other as an accessory before the fact, in causing and procuring him to commit the alleged felony. The former, at the instigation of the other, had personated the soldier entitled to prize-money, but the other had represented that he was entitled to the prize-money, and the defence was that he had purchased it from the soldier, which there was no express evidence to disprove:—Held, nevertheless, that both were guilty. *Reg. v. Lake*, 11 Cox, C. C. 333.

3. VOTERS.

Parliamentary—Evidence.—On an indictment for fraudulently personating a voter at an election of a member of parliament for a city being a county of itself, the writ to the sheriff must be produced in order to prove that the election was duly made. *Reg. v. Vaile*, 6 Cox, C. C. 470.

Municipal—Offence, when Complete.—The offence of inducing another to personate a voter at a municipal election under 22 & 23 Vict. c. 35,

s. 9, is complete upon the personator tendering the voting paper, although, on being asked if he is the person whose name is signed to the voting paper, he answers "No," and the vote is accordingly rejected. *Reg. v. Hayne*, 9 Cox, C. C. 412; 4 B. & S. 715; 33 L. J., M. C. 81.

— **Fabricating Voting Papers.**]—At an election of guardians, W., at the request of the voter's wife, who informed him that she had her husband's authority to fill up the voting paper for a particular candidate, caused her to put her mark, and he put the initials of the voter opposite the candidate's name and attested the paper, which the returning officer treated as the mark and vote of the voter himself:—Held, that there was no evidence to justify the conviction of W. for unlawfully fabricating a voting paper within the meaning of 14 & 15 Vict. c. 105, s. 3. *Wickham v. Phillips*, 47 J. P. 612.

— **Person Dead.**]—By 14 & 15 Vict. c. 105, s. 3, if any person, pending or after the election of any guardian, shall wilfully, fraudulently, and with intent to affect the result of such election, personate any person entitled to vote at such election, he shall be liable, on conviction by two justices, to three months' imprisonment:—Held, that the section makes no provision against the offence of personating a voter who is dead at the time of the election, as the offender cannot in such case be convicted of personating any one "entitled to vote" at the election. *Whiteley v. Chappell*, 4 L. R., Q. B. 147; 38 L. J., M. C. 51; 19 L. T. 355; 17 W. R. 175.

— **What Indictable.**]—On an indictment upon 5 & 6 Will. 4, c. 76, s. 34, for wilfully making a false answer, one count alleged that the prisoner falsely, fraudulently and deceitfully personated a Burgess at an election of councillors for a borough:—Held, no offence under the section or at common law. *Reg. v. Bent*, 2 C. & K. 179; 1 Den. C. C. 157.

4. IN OTHER CASES.

To Obtain Real or Personal Property.]—By 37 & 38 Vict. c. 36 (which, by s. 4, may be cited for all purposes as "The False Personation Act, 1874"), s. 1, if any person shall falsely and deceitfully personate any person, or the heir, executor, or administrator, wife, widow, next of kin, or relation of any person, with intent fraudulently to obtain any land, estate, chattel, money, valuable security, or property, he shall be guilty of felony, and upon conviction shall be liable, at the discretion of the court by which he is convicted, to be kept in penal servitude for life, or any period not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

By s. 2, nothing in the act shall prevent any person from being proceeded against and punished under any other act, or at common law, in respect of an offence (if any) punishable as well under the act as under any other act, or at common law.

By s. 3, no offence against the act shall be prosecuted or tried at any court of general or quarter sessions of the peace.

XXX. POACHING, AND OFFENCES RELATING TO GAME, HARES AND RABBITS.

1. By Night.

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1. BY NIGHT.

a. The Offence.

Entering and being on Land—Two Offences.]

—The 9 Geo. 4, c. 69, s. 9, creates two distinct offences. First, the *entering* in the night on land to the number of three, some one of them being armed; and second, the *being* in the night on land to the number of three, some one of them being armed. *Rea v. Kendrick*, 7 C. & P. 184.

Entry on Land—What is.]—If nets are hung on the twigs of a hedge within the close, it is an entry, though the parties are in a lane outside the hedge. *Athea's case*, 2 Lewin, C. C. 191. See *Pickering v. Budd*, 1 Stark. 56; 4 Camp. 219.

If three persons go out together night-poaching, one being armed, and two of them stand in a road, and set nets in the hedge of a field of A., and send their dog into the field to drive hares into the net, and after this the third leaves them in the road and goes to poach by himself in another field of A.; this will not support an indictment for night-poaching on land of A.; for the sending in of a dog is not an entering of land within 9 Geo. 4, c. 69, s. 9; and the entering of the second field was not a joint act of the three. *Reg. v. Nickless*, 8 C. & P. 757.

Six were indicted under 9 Geo. 4, c. 69, s. 9, for having been in a field at night, armed, for the purpose of taking game. Three of the six had been in the field, and three had remained outside of it, aiding and assisting the others:—Held, that the actual entry of some of the party, armed, was sufficient to support the conviction of all, though it could not be proved which of them had actually entered the field. *Reg. v. Whittaker*, 1 Den. C. C. 310; 3 Cox, C. C. 50; 2 C. & K. 636; 17 L. J., M. C. 127.

In order to bring a case of night-poaching within 9 Geo. 4, c. 69, s. 9, it is not necessary to prove that three persons were all within the same close or inclosure, on the same piece of open land, if all were of one party, or being armed, with the same common purpose, in the place described in the indictment. *Reg. v. Eaton*, 2 Den. C. C. 274; T. & M. 598.

A defendant was convicted under 1 & 2 Will. 4, c. 32, s. 30, of trespassing on land in the

possession and occupation of B. in pursuit of game:—Held, that the entry upon the land under that section must be a personal entry, but it having been proved that the defendant was on the highway in pursuit of game, and not as a traveller, and that B. was the owner of the land on both sides of the highway:—Held, also, that, as the soil and freehold of the highway were in B. as owner of the adjoining land, there was a personal entry on the land by the defendant. *Reg. v. Pratt*, Dears. C. C. 502; 3 C. L. R. 686; 4 El. & Bl. 860; 24 L. J., M. C. 113; 1 Jur., N. S. 681.

On an indictment under 57 Geo. 3, c. 90, a man might have been convicted of having entered a wood, and of being found armed there, though he was not seen in such wood. It was sufficient if there was evidence to shew that he had been there armed. In this case the prisoner was not seen in the wood, but a gamekeeper saw flashes in the wood and heard reports of guns, and saw the prisoner afterwards in the close adjoining the wood. *Reg. v. Worker*, 1 M. C. C. 165.

Open Land—What is.]—A person was convicted under 9 Geo. 4, c. 69, s. 1, for unlawfully entering upon open land with a net, by night, for the purpose of taking and destroying game. The land was a highway, consisting of a metalled road, with waste land of varying extent on either side:—Held, that this was not open land, within the meaning of the statute. *Vessey v. Hoskins*, 34 L. J., M. C. 145; 11 Jur., N. S. 737; 12 L. T. 303; 13 W. R. 652.

Warren—Question of Fact.]—B. was caught with rabbits at night in a field forming part of a farm over which H. had the right of sporting. The justices found as a fact that this field was not a warren or ground used for the breeding or keeping of hares or rabbits within the 17th section of the Larceny Act, 1856, and convicted B. of night poaching under 9 Geo. 4, c. 69, s. 1:—Held, that it was a question of fact whether the place was within this description; and that upon this finding the conviction was right. *Bevan v. Hopkinson*, 34 L. T. 142.

Intention to take Game in particular Place.]—A count stated that the prisoners were in a field called A., for the purpose of then and there taking game:—Held, that they could not be convicted on that count, unless the jury was satisfied that the prisoners had an intention of taking game in that particular field. *Reg. v. Capewell*, 5 C. & P. 649.

On an indictment on 57 Geo. 3, c. 90, the prisoner having entered a given close with intent there to kill game, and being there found armed, it was necessary to prove an entry with that intent, into the close specified. *Reg. v. Barham*, 1 M. C. C. 151.

To sustain an indictment for night-poaching, the parties must have been in the place charged in the indictment, with intent to destroy game there, and it is incumbent on the prosecutor to convince the jury that the defendants had an intent to destroy game in the particular place mentioned in the indictment. *Reg. v. Gainer*, 7 C. & P. 231.

In Concert and Co-operation.]—To support an indictment for night-poaching by three or more being armed, it is not sufficient to prove that one

of the prisoners was in the place laid in the indictment, and that the rest of the party was in another wood which was separated from the place mentioned in the indictment by a turnpike road. *Reg. v. Dowsell*, 6 C. & P. 398.

If one of a party of poachers is found in the land specified, the rest co-operating in the pursuit in adjoining land, all may be alleged to be found in the land specified. *Reg. v. Andrews*, 2 M. & Rob. 37; *S. P.*, *Reg. v. Lockett*, 7 C. & P. 300.

Those who are watching at the outside of a preserve, for the purpose of giving the alarm, on the approach of the gamekeeper, to others who are in the preserve, and who afterwards go into the preserve for that purpose, are equally guilty with those who enter the preserve at first. *Reg. v. Passey*, 7 C. & P. 282.

Two of the prisoners were seen together running out of a coppice, one of them with a gun. The third immediately afterwards came out of it alone with a gun and a pheasant:—Held, insufficient evidence of concert. *Reg. v. Jones*, 2 Cox, C. C. 185.

It is not essential that all the prisoners charged should actually enter the inclosed places; but, if they are associated together for the common purpose of taking game contrary to the statute, and some of the party actually enter such place to effect that purpose, while the others remain near enough to aid and assist, they may all be convicted under an indictment charging them with being in such place for such purpose. *Reg. v. Whittaker*, 2 C. & K. 636; 1 Den. C. C. 810; 3 Cox, C. C. 50; 17 L. J., M. C. 127.

It is not necessary to constitute the offence of three or more persons armed entering land in the night to take game, that all the three persons should be in one close, or that the land should be in the occupation of one person. *Reg. v. Uzzell*, 3 C. & K. 150; 2 Den. C. C. 274; 5 Cox, C. C. 188; 20 L. J., M. C. 192; 15 Jur. 434.

One of the prisoners may be in Whiteacre, another in Blackacre, and another in Greenacre, and the land may be in the occupation of different persons. The offence is complete if three persons are in one common party unlawfully upon any land, whether open or inclosed land, for the common purpose of illegally destroying game; and it is sufficient to describe the close of land as inclosed or open land, in the occupation of a certain person or of certain persons. *Id.* And see *Reg. v. Nickless*, and *Reg. v. Eaton*, ante, col. 574.

Armed—Decisions under Repealed Enactment.]—It was no answer to a charge on 57 Geo. 3, c. 90, for being found armed in the night in a wood, with intent to kill game, that the prisoners put down their arms and left them before they were seen, if it was perceived that some one was there armed before they were seen. *Reg. v. Nash*, R. & R. C. C. 386.

On an indictment on 57 Geo. 3, c. 90, for being out armed, with intent to kill game, it appeared that several persons were out with such intent, but only one of them was armed with a gun:—Held, that the rest, who were unarmed, were liable to be convicted under that act. *Reg. v. Smith*, R. & R. C. C. 368.

For if any one of the party was armed, it was sufficient to bring the whole party within the statute. *Id.*

On an indictment on 57 Geo. 3, c. 90, against a person for being found armed in the night,

with intent to kill game :—Held, that if several went into a close in the night to kill game, and one had arms without the knowledge of the others, the other persons who were unarmed were not liable to be convicted. *Rea v. Southern*, R. & R. C. C. 444.

Weapons—What are.]—Large stones are offensive weapons, within 9 Geo. 4, c. 69, s. 9, if the jury is satisfied that the stones are of a description capable of inflicting serious injury if used offensively, and were brought and used for that purpose. *Rea v. Grieve*, 7 C. & P. 803.

The mere use of a small stick, as a weapon, by a poacher, in a sudden affray with gamekeepers, is not enough to prove such stick an offensive weapon, under 9 Geo. 4, c. 69, s. 9. The jury must be convinced that the party took it with him for the purpose of offence. *Rea v. Fry*, 2 M. & Rob. 42.

A party out at night, in pursuit of game, carried a thick stick large enough to be called a bludgeon, but which he used at other times as a crutch, he being lame :—Held, that it was a question for the jury whether the prisoner had taken out this stick to use as an offensive weapon, or merely for the purpose to which he usually applied it ; and that although it was a weapon within the statute, and might be used offensively, yet that, unless the defendant took it out with an intention of so using it, the indictment could not be sustained. *Rea v. Palmer*, 1 M. & Rob. 70.

An indictment alleged that the defendant and others were armed with bludgeons and other offensive weapons, and the evidence was that they had sticks :—Held, that a stick was not necessarily an offensive weapon, in the absence of evidence of its size, &c., even although it had been used offensively. *Reg. v. Merry*, 2 Cox, C. C. 240.

Night poachers carrying things not apparently weapons, but capable of being used as such, and brought out to serve for both harmless and offensive weapons, are armed within the meaning of 9 Geo. 4, c. 69, s. 9. *Reg. v. Sutton*, 13 Cox, C. C. 648.

Three men in company were seen hunting game in the night-time with dogs. Two of the men were not in any way armed. The third, who was lame, only carried the stick with which he usually walked :—Held, that the jury should not find him guilty unless satisfied that this walking-stick was an offensive weapon, and that he had carried it with the intention of using it as an offensive weapon, should occasion arise. *Reg. v. Williams*, 14 Cox, C. C. 59.

In a case of night poaching by three or more armed, if one has a gun, all are armed within 9 Geo. 4, c. 69, s. 9. *Reg. v. Goodfellow*, 1 C. & K. 724 ; 1 Den. C. C. 81 ; *S. P.*, *Reg. v. Andrews*, 1 Cox, C. C. 144 ; *Reg. v. May*, 5 Cox, C. C. 176.

What is Game.]—A person cannot be convicted under 9 Geo. 4, c. 69, s. 9, for entering land by night, armed, for the purpose of taking game, whose object is to steal young pheasants which had been hatched by a hen, and which had not yet become wild. *Reg. v. Garnham*, 2 F. & F. 347 ; 8 Cox, C. C. 451.

b. Apprehension of Offenders.

By Gamekeepers.]—When gamekeepers find

poachers in a wood, they need not give any intimation by words that they intend to apprehend—the circumstances are sufficient notice ; and if a person out poaching sees a man running after him, he may fairly presume that the person means to apprehend him. *Rea v. Davis*, 7 C. & P. 785.

On an indictment of prisoners for night poaching, and for assaulting a gamekeeper with intent, evidence of the common intent to poach does not sustain the allegation of a common intent to wound. *Reg. v. Doddridge*, 8 Cox, C. C. 335.

The prisoners were seen upon the land of the prosecutor at night in pursuit of game. They escaped into a highway and there assaulted the keepers. But the keepers stated that they had not followed them into the highway with an intention to arrest them there :—Held, that there being no intention on the part of the keepers to arrest them at the time when the attack was made upon them, it was not an assault within 9 Geo. 4, c. 69. *Id.*

Gamekeepers, who were out watching in the night, heard firing of guns in the preserves of their employer, and they waited in a turnpike road, expecting the poachers to come there, which they did, and an affray ensued between the gamekeepers and the poachers :—Held, that, if the gamekeepers were then endeavouring to apprehend the poachers, they were not justified in so doing. *Reg. v. Meadham*, 2 C. & K. 633.

A gamekeeper, or other person lawfully authorized under 9 Geo. 4, c. 69, s. 2, may apprehend persons found offending under that act, without calling on them to surrender, if the circumstances are such as to constitute notice of his purpose. *Rea v. Payne*, 1 M. C. C. 378.

A person who is employed by a lord of a manor, as a watcher of his game preserves, is a person having authority to apprehend night-poachers, and he need not have any authority from the lord of the manor. *Rea v. Price*, 7 C. & P. 178.

Where a person was found night poaching on the manor of A. by one of his watchers, and was pursued off the manor, and then on to it again, and there snapped his gun at the watcher, he was guilty of a capital offence under 9 Geo. 4, c. 31, ss. 11, 12. *Id.*

The gamekeeper of a person who has merely the right of shooting over land is not justified in apprehending a person unlawfully being upon such land by night, for the purpose of taking game. *Reg. v. Price*, 5 Cox, C. C. 277.

A gamekeeper appointed by a person having only a permission to shoot, trying to take a gun from a poacher, and in the scuffle causing a loaded gun to go off, which killed the poacher, is guilty of manslaughter. *Reg. v. Westley*, 1 F. & F. 528.

A person having only a right of shooting over land has no right to empower keepers to apprehend parties trespassing in search of game ; and on their resisting with no greater violence than is used by the keepers, they will not be liable for an assault ; but if the trespass is in the night, they may be indicted for night poaching. *Reg. v. Wood*, 1 F. & F. 470.

To justify the apprehension of an offender, under 1 & 2 Will. 4, c. 32, s. 31, it is only necessary that he should have been made to understand, by the person authorized under that section, that he is required to tell his christian name, surname, and place of abode, and that he

should have refused to comply with such requisition. It is not necessary that he should have been required both to quit the land and also to tell his name. *Reg. v. Prestney*, 3 Cox, C. C. 505.

By Policemen.]—A policeman has no power under 25 & 26 Vict. c. 114, to apprehend persons whom he may suspect of coming from land where they have been unlawfully in pursuit of game, and such persons may lawfully resist and use such violence as is necessary to prevent their apprehension. *Reg. v. Spencer*, 3 F. & F. 854.

Where, under such circumstances, several persons resist with intent only to prevent their apprehension, and one of them is guilty of excess, the others are not responsible for the act of their companion exceeding the common intent. *Ib.*

A policeman can only justify stopping and searching a cart upon a highway under 25 & 26 Vict. c. 114, where he has good cause to suspect that the cart is carrying game which has been unlawfully obtained; and upon an indictment for assaulting the policeman in the execution of his duty under such circumstances, it is necessary to prove the existence of reasonable grounds of suspicion; where no reasonable grounds of suspicion can be shewn, persons are justified in resisting the search. *Reg. v. Spenceer*, 3 F. & F. 857.

By other Persons.]—The servant of the owner of a wood attempted to apprehend a poacher whom he found there at eight o'clock on the morning of the 17th December, and the poacher shot at him:—Held, that this was not a capital offence within 9 Geo. 4, c. 31, ss. 11, 12, as there was no proof that the poacher was in pursuit of game an hour before sunrise. *Re v. Tomlinson*, 7 C. & P. 183.

The 14 & 15 Vict. c. 19, s. 11, which gives any person a right to apprehend persons committing indictable offences in the night, applies to persons night poaching within 9 Geo. 4, c. 69, s. 9, although the night is defined to begin and end at different times in the two statutes. *Reg. v. Sanderson*, 1 F. & F. 598.

c. Limitation of Time for Prosecution.

Prosecution commenced within Twelve Months.]—B. and G. were convicted of night poaching. The indictment was upon 9 Geo. 4, c. 69; by s. 4 of which it is enacted, that the prosecution for every offence "punishable by indictment by virtue of this act shall be commenced within twelve calendar months after the commission of the offence." The offence was committed on the 4th of December, 1845. The information before the justices, and warrant, were on the 19th of December, 1845. B. was apprehended and committed on the 5th of September, 1846, and G. on the 21st of October, 1846. The indictment was preferred on the 5th of April, 1847:—Held, that the prosecution was commenced in time, and the conviction right. *Reg. v. Brooke*, 1 Den. C. C. 217; 2 C. & K. 402; 2 Cox, C. C. 436.

Where it appeared that the offence was committed on the 12th January, 1844, and the indictment was preferred on the 1st March, 1845,

and the warrant of commitment by which the defendant was committed to take his trial was given in evidence, and it was dated on the 11th December, 1844:—Held, that it was sufficiently shewn that the prosecution was commenced within twelve calendar months after the commission of the offence, within s. 4. *Reg. v. Austin*, 1 C. & K. 621.

In a case of night poaching by persons armed, the offence was committed on the 4th December, 1845. On the 19th December, 1845, information of the offence was made before a magistrate, who on that day granted warrants to apprehend A. and B., two of the offenders. On one of these warrants A. was apprehended and committed for trial on the 16th September, 1846; B. being apprehended on the other warrant, and committed for trial on the 21st October, 1846. The indictment was preferred and found on the 5th April, 1847:—Held, that the prosecution was commenced within twelve calendar months after the commission of the offence, and that it was commenced by the information and warrants to apprehend, or at all events by the apprehension of the prisoners. *Reg. v. Gibson*, 2 C. & K. 402.

Quære, whether the preferring of an indictment against a party for night poaching, which is ignored, is a commencement of the prosecution within 9 Geo. 4, c. 69, s. 4, so as to warrant the conviction of the party on another indictment preferred four years after the offence. *Re v. Kilminster*, 7 C. & P. 228.

The issuing of a warrant of apprehension is not a commencement of proceedings within 9 Geo. 4, c. 69, s. 4. *Reg. v. Hull*, 2 F. & F. 16.

Upon the trial of an indictment in order to prove that the proceedings were commenced within twelve months after the commission of the offence, a warrant for the party's apprehension issued within the twelve months was produced; but the information on which the warrant was founded was not put in evidence:—Held, that in the absence of the information, the warrant was not legal evidence that the proceedings had been commenced within the time limited. *Reg. v. Parker*, 9 Cox, C. C. 475; L. & C. 459; 33 L. J., M. C. 135; 10 Jur., N. S. 596; 10 L. T. 463; 12 W. R. 765.

C. was indicted for night poaching on the 6th February, 1863. He pleaded guilty, but subsequently applied by his counsel for leave to withdraw the plea, and to move in arrest of judgment, upon the ground that the proceedings against him had not been commenced within twelve calendar months, as directed by 9 Geo. 4, c. 69, s. 4:—Held, that the application to withdraw the plea was one which ought to be granted, and that as no warrant or information was produced shewing that proceedings had been commenced within twelve months, the objection was fatal. *Reg. v. Casbolt*, 21 L. T. 263.

d. Indictment.

Averment of Place.]—An indictment on 57 Geo. 3, c. 90, charging a party with having entered into a forest, chase, &c., with intent to destroy game, and being found armed in the night, must, in some way or other, have particularized the place. *Re v. Ridley*, R. & R. C. C. 515.

In an indictment under 9 Geo. 4, c. 69, s. 9, it is sufficient to charge entering, &c., certain land

in the occupation of A., without specifying whether it was inclosed or not. *Rea v. Andrews*, 2 M. & Rob. 37; *S. P., Reg. v. Morris*, 5 Cox, C. C. 205.

Or to name any particular close; it is sufficient to say, "land in the occupation of B. or C." as the fact may be. *Reg. v. Jezzell*, T. & M. 598; 2 Den. C. C. 274; 5 Cox, C. C. 188; 3 C. & K. 150; 20 L. J., M. C. 192; 15 Jur. 434.

But "a certain cover in the parish of A." is too general a description to sustain an indictment for poaching. *Rea v. Crick*, 5 C. & P. 508.

An indictment for night poaching stated the offence to have been committed in a wood, called "the Old Walk, of, and belonging to, and then in the occupation of James, Earl of W.;" and it was proved that the occupation was correctly stated, but that the name of the wood was Long Walk, and that it had never been called Old Walk:—Held, a variance. *Rea v. Owen*, Car. C. L. 309; 1 M. C. C. 118.

To whom Land belongs.]—It is sufficient to allege that the land is land "of and belonging to J. W. D.," without stating it to be in the occupation of J. W. D. *Reg. v. Riley*, 3 C. & K. 116.

Assaulting Gamekeeper.]—An indictment for assaulting a gamekeeper with a weapon, stated that the defendants were in certain land of J. R., Earl of B., by night, armed with guns, for the purpose of destroying game, and that they were "then and there in the said land by night, as aforesaid, by one W. R., the servant of the said J. R., Earl of B., then and there having lawful authority to seize and apprehend the said [defendants] found," and that the defendants with the guns assaulted and offered violence to W. R.:—Held, that the indictment was bad, as it did not sufficiently shew that the defendants, when found by W. R., were committing any offence against the 9 Geo. 4, c. 64. *Reg. v. Curmook*, 9 C. & P. 730.

By Night.]—Where an indictment alleged that A., B., C., D., to the number of three and more together, did by night unlawfully enter divers closes there situate, and being in the occupation of E., and were there and then in the said closes, armed with guns for the purpose of destroying game:—Held, that it did not contain a sufficient averment that the defendants were by night in the closes for the purpose of destroying game. *Davies v. Rea (in error)*, 10 B. & C. 89; 5 M. & R. 78.

Being Armed.]—In an indictment for night poaching, it is advisable to insert a distinct averment that the defendants were armed when they entered and were on the land, in addition to the usual allegation, "being then and there by night as aforesaid armed." *Rea v. Wilks*, 7 C. & P. 811.

A count for assaulting a gamekeeper alleged that the defendants, with other persons, to the number of three or more, entered by night a certain close with guns and other offensive weapons, for the purpose of taking and destroying game, and then proceeded to allege that the defendants being then and there in the said land were found by one H. S., the servant of B. W. W., and there with the said guns assaulted and beat the said H. S.:—Held, that the count was de-

fective for not alleging that the defendants were in the close armed with guns, &c., according to the language of s. 9 of 9 Geo. 4, c. 69. *Reg. v. May*, 5 Cox, C. C. 176.

An indictment charged A., B. and six others, "that they, being respectively armed with guns and other offensive weapons, entered." A. and B. were each proved to have been armed with a gun, the other six with bludgeons. Objection, that the averment, "other offensive weapons" (not specifying what), made the arming of the other six only constructive, which was not sufficient to bring them within the statute:—Held good. *Reg. v. Goodfellow*, 1 Den. C. C. 81; 1 C. & K. 724.

Previous Convictions.]—An indictment under 9 Geo. 4, c. 69, s. 1, that on the 20th of December, 1854, C. was convicted for that he, within the space of six calendar months last past, by night, after the expiration of the first hour after sunset, and before the beginning of the first hour before sunrise, did, by night, then and there unlawfully enter a close with a gun, for the purpose of then and there taking and destroying game, and that he was then sentenced to be imprisoned for the period of three calendar months; that afterwards, to wit, on the 27th of November, A.D. 1858, he was duly convicted, for that he, within six calendar months next before, &c., to wit, on the 24th of November, 1858, in the night of the same day, by night, unlawfully did enter, and be in and upon certain inclosed land, with certain instruments, for the purpose of killing, taking and destroying game thereon, this being his second offence, and was then adjudged to be imprisoned for six calendar months—is good, as it sufficiently shews upon the face of it, that two previous convictions of offences within the terms of the act had taken place. *Cureton v. Reg. (in error)*, 1 B. & S. 208; 8 Cox, C. C. 481; 30 L. J., M. C. 149; 9 W. R. 665.

Joinder of Counts.]—A count for night poaching may be joined with a count for assaulting a gamekeeper authorized to apprehend, and with counts for assaulting a gamekeeper in the execution of his duty, and for a common assault. *Rea v. Finneane*, 5 C. & P. 551.

Amendment at Trial.]—A variance between the allegation of occupation of land in an indictment for night poaching, and the proof of the occupation, will, if not such as to have misled, be amended at the trial. *Reg. v. Sutton*, 13 Cox, C. C. 648.

Abandonment of Counts—Effect of.]—A first count charged the prisoners under 9 Geo. 4, c. 69, s. 2, with being found on land at night armed with a gun for the purpose of taking game, by A. and B., who had lawful authority to apprehend them, and that they, being about to apprehend them, the prisoners with a weapon assaulted and wounded them; a second count charged an unlawful wounding; and the third and fourth counts charged a common assault. The counsel for the prosecution abandoned the last three counts, and elected to stand on the first count. The jury returned a verdict of guilty of night poaching and a common assault. Upon a question raised, whether the prisoners could be convicted of a common assault upon the first count:—Held, that the prosecuting counsel having with-

drawn the counts for common assault from the jury, the question ought not to be entertained. *Reg. v. Day*, 22 L. T. 452.

e. Evidence.

Authority to Apprehend.]—On an indictment for wounding with intent to prevent lawful apprehension, it was proved that the prisoners were found poaching in the night, armed, in a preserve which had belonged to the Earl of L., and then was in possession of the earl's trustees. The person trying to apprehend was a watcher employed by the head keeper, the latter having been appointed by the earl some twenty years before, and paid by his agent down to the time of the trial, but the head keeper had never had any direct communication with the trustees:—Held, sufficient proof of an authority to apprehend. *Reg. v. Fielding*, 2 C. & K. 621.

Without Permission of Owner.]—Where A. was indicted for night poaching on the land of the prosecutor, which land was in the occupation of a tenant:—Held, that it was not necessary, in order to support the indictment, to shew by evidence that A. was there without the permission of the tenant, or of the prosecutor, if the right to take game upon the land had been reserved to him. *Reg. v. Wood, Dears. & B. C. C. 1*; 25 L. J., M. C. 96; 2 Jur., N. S. 478.

Being in Close with intention of taking Game.]

—Two were charged with being by night, and armed, in a close for the purpose therein of destroying game. It was proved that they passed through the close without doing anything in it, and that after being lost sight of for two hours they were found three miles off with game in their possession:—Held, that there was evidence that they were in that particular close for the purpose of taking game, and that if persons went out with a general intention of taking game, that was sufficient evidence of an intent to take game in every field through which they passed, in which game might be expected to be found. *Reg. v. Higgs*, 10 Cox, C. C. 527.

Intent to take Game inferred.]—An indictment under 9 Geo. 4, c. 69, charged, that the prisoners "were in the Great Ground on the 11th February, armed, with intent, then and there, to take game." The evidence shewed that the prisoners were all seen, for the first time, in the Great Ground, employed in taking down two nets; after this was done they picked up some dead hares, which were lying on the ground near the nets, and hanging them on long sticks over their shoulders, walked homewards with them. It also appeared that they had dogs with them in the Great Ground:—Held, that the questions for the jury were, first, whether they were in the Great Ground with the intent to take game at that time, and that such intent might be inferred from the presence of the nets and dogs, though they might have taken the hares elsewhere. *Reg. v. Turner*, 3 Cox, C. C. 304.

Being Armed.]—Held, also, that the allegation that they were armed could not be sustained, unless the jury should be of opinion that they took the sticks for the double purpose of carry-

ing away the game, and of attack or defence in the event of their being interrupted by keepers while in the pursuit of game. *Id.*

Previous Convictions.]—On an indictment for night poaching, having been twice summarily convicted, the convictions produced contained no allegation that the defendant had entered at night:—Held, insufficient evidence of a previous conviction. *Reg. v. Merry*, 2 Cox, C. C. 240.

f. Convictions and Commitments.

Conviction—Form.]—A conviction under 9 Geo. 4, c. 69, s. 1, must allege that the defendants by night, were in certain land for the purpose of taking game in such land; it not being sufficient to follow the words of the statute. *Fletcher v. Calthorp*, 1 New Sess. Cas. 529; 8 Q. B. 880; 14 L. J., Q. B. 49; 9 Jur. 205.

Previous Convictions—Evidence.]—*See supra.*

Form and Contents.]—A conviction under 9 Geo. 4, c. 69, s. 1, stating, that on the 20th of December, 1854, C. was convicted, for that he, within the space of six calendar months last past, by night, after the expiration of the first hour after sunset, and before the beginning of the first hour before sunrise, did, by night, then and there unlawfully enter a close with a gun, for the purpose of then and there taking and destroying game, and that he was then sentenced to be imprisoned for the period of three calendar months; that afterwards, to wit, on the 27th of November, A.D. 1858, he was duly convicted, for that he, within six calendar months next before, &c., to wit, on the 24th of November, 1858, in the night of the same day, by night, unlawfully did enter and be in and upon certain inclosed land, with certain instruments, for the purpose of killing, taking and destroying game thereon, this being his second offence, and was then adjudged to be imprisoned for six calendar months, is good, as it sufficiently shews upon the face of it, that two previous convictions of offences within the terms of the act had taken place. *Cureton v. Reg. (in error)*, 1 B. & S. 208; 8 Cox, C. C. 481; 30 L. J., M. C. 149; 9 W. R. 665.

Commitment.]—A warrant of commitment, reciting an order of sessions confirming a conviction under 9 Geo. 4, c. 69, s. 1, ordering the prisoners, at the expiration of their term of imprisonment, to find sureties not to offend again, instead of not so to offend again, is ill. *Reynolds, Ex parte*, 13 L. J., M. C. 65; 8 Jur. 192.

The court will presume that the commitment contains a true recital of the conviction; therefore, where the certiorari is taken away, and the prosecutor seeks, under s. 7, to avail himself of the conviction to cure a defect in the commitment, the prisoner is not bound, nor is it his duty to bring the conviction before the court. *Id.*

g. Informations.

What sufficient to give Jurisdiction.]—An information under 9 Geo. 4, c. 69, s. 1, for entering land for the purpose of taking game, is sufficient to give the justices before whom it is laid juris-

diction to hear the charge, although it does not allege that the entry was for the purpose of taking game there. *Reg. v. Western*, 1 L. R., C. C. 122; 37 L. J., M. C. 81; 18 L. T. 299; 16 W. R. 730; 11 Cox, C. C. 93.

2. IN DAY-TIME.

a. The Offence.

Statute.—By 1 & 2 Will. 4, c. 32, ss. 30, 31, *it is a penal offence to trespass in the day-time upon lands in search of game, punishable by a fine on conviction before a justice of peace; and all such trespassers may be required to quit the land, and to tell their names and places of abode, and in case of refusal may be arrested. These provisions, however, do not apply to persons hunting or coursing, or claiming or exercising a right of free warren, nor to gamekeepers; nor do they preclude or prevent any person from proceeding by way of action to recover damages for trespasses, except that when proceedings have been taken under the act, no action is maintainable for the same trespass.*

What Game.—The 1 & 2 Will. 4, c. 32, s. 30, which imposes a penalty for trespass in search or pursuit of game, means in search or pursuit of live game. *Kenyon v. Hart*, 6 B. & S. 249; 34 L. J., M. C. 87; 11 Jur., N. S. 602; 11 L. T. 733; 13 W. R. 406.

Reservation of Game to Landlord.—An agreement under which a tenant held contained a stipulation that he would not destroy any game, and would endeavour to preserve all game bred and being on the farm. He was convicted under 1 & 2 Will. 4, c. 32, s. 12, that he being the occupier of land, the right of killing the game on such land being reserved to his landlord, did unlawfully kill upon such land game.—Held, that the stipulation in the agreement could not be construed as a reservation of game to the landlord, and that the conviction ought to be quashed. *Coleman v. Bathurst*, 6 L. R., Q. B. 366; 40 L. J., M. C. 131; 24 L. T. 426; 19 W. R. 848.

What amounts to a Trespass.—To constitute the offence of trespassing upon land in search or pursuit of game, under 1 & 2 Will. 4, c. 32, s. 30, there must be a bodily entering or being of the person upon the land upon which the trespass is alleged to have taken place, and there may be a trespass within the act, though, at the time, the person is upon a highway. *Reg. v. Pratt, Dears.* C. C. 502; 3 C. L. R. 686; 4 Bl. & Bl. 860; 24 L. J., M. C. 113; 1 Jur., N. S. 681.

Firing at game from a highway is a trespass in pursuit of game. *Mayhew v. Wardley*, 14 C. B., N. S. 550; 8 L. T. 504.

A. being upon his own land (or land upon which he was privileged to shoot), fired at and killed a pheasant in the land of B., and went upon B.'s land (without leave), and picked it up.—Held, a trespass in search or pursuit of game, the whole being one continuous act. *Osmond v. Meadows*, 12 C. B., N. S. 10; 31 L. J., M. C. 238; 8 Jur., N. S. 1079; 6 L. T. 290; 10 W. R. 537.

A., standing on his own land, a pheasant rose up on it, and flew to the close of B. A. fired a gun, and struck it while over that close, whereupon the bird fell dead, and A. entered and picked it up.—Held, that this was not a trespass in

search or pursuit of game within 1 & 2 Will. 4, c. 32, s. 30, unless the facts were such as to shew that the firing at the bird, the entry on the close of B., and the picking up of the bird, all formed part of one continuous transaction. *Kenyon v. Hart*, 6 B. & S. 249; 34 L. J., M. C. 87; 11 Jur., N. S. 602; 11 L. T. 733; 13 W. R. 406.

By Servants of Tenant.—A tenant of land, the right of sporting over which was reserved to the landlord, employed persons, as his servants, to kill rabbits on the land.—Held, that the servants were not liable, for having acted in that employment, to be convicted under 1 & 2 Will. 4, c. 32, s. 30, for a trespass in pursuit of conies. *Spicer v. Barnard*, 1 El. & El. 874; 28 L. J., M. C. 176; 5 Jur., N. S. 961; 7 W. R. 467; *S. P., Padwick v. King*, 7 C. B., N. S. 88; 29 L. J., C. P. 42; 6 Jur., N. S. 274.

What Parties Liable to Conviction.—In support of an information against A. for aiding and abetting B. to commit the offence of trespass in pursuit of game, there was evidence that A. drove B. in a conveyance along a turnpike road for a lawful purpose; that the conveyance was afterwards stopped, when B. got out and entered a field and shot a hare, which he gave to A. on returning to the conveyance, and then A. drove along the road.—Held, that there was evidence on which the justices might find A. guilty of the offence so charged. *Stacey v. Whitehurst*, 18 C. B., N. S. 344; 34 L. J., M. C. 94; 11 L. T. 710; 13 W. R. 384.

Where two persons are jointly engaged in the unlawful act, they may be severally convicted thereof. *Mayhew v. Wardley*, 14 C. B., N. S. 550; 8 L. T. 504.

Leave and Licence.—The leave and licence of the occupier, to be an answer to such complaint, must precede the act of trespass. *Morden v. Porter*, 7 C. B., N. S. 641; 29 L. J., M. C. 213; 1 L. T. 403; 6 W. R. 262.

A landlord, who on letting a farm verbally has reserved the game to himself, has thereby a sufficient authority to give leave to a person to kill game on such farm, to prevent any such person from being a trespasser thereon in pursuit of game within s. 30 of 1 & 2 Will. 4, c. 32. *Jones v. Williams*, 46 L. J., M. C. 270; 36 L. T. 559.

On Sunday.—A. was convicted for that he, on the 15th of August (being Sunday), did use snares for the purpose of killing game. He set the snares on the 13th and 14th of August, and on the 15th the snares were seen set ready to catch game, and two dead grouse were found caught in snares.—Held, that a snare was an engine or an instrument within 1 & 2 Will. 4, c. 32, s. 3, and that putting down a snare on a day before Sunday, for the purpose of killing game, and keeping it set on Sunday, was using an engine or an instrument on Sunday. *Allen v. Thompson*, 5 L. R., Q. B. 336; 39 L. J., M. C. 102; 22 L. T. 472; 18 W. R. 1196.

b. Information and Complaint.

By whom laid.—An information for trespassing in pursuit or search of game may, under 1 & 2 Will. 4, c. 32, s. 30, be laid by a common informer, or a person who has no interest in the land trespassed upon. *Middleton v. Gale*, 8 A.

& E. 155; 3 N. & P. 372; 1 W., W. & H. 352; 2 Jur. 819.

A complaint of trespass in pursuit of game, under 1 & 2 Will. 4, c. 32, s. 30, need not be made by a person having an interest in the land. *Morden v. Porter*, 7 C. B., N. S. 641; 29 L. J., M. C. 213; 1 L. T. 403; 6 W. R. 262.

Under 6 & 7 Will. 4, c. 65, s. 9, an information under 1 & 2 Will. 4, c. 32, if laid by a person not deposing, on oath, to the matter of the charge, must distinctly shew that the charge was deposed to by some other credible witness on oath. *Reg. v. Scotton*, 5 Q. B. 493; D. & M. 501; 1 New Sess. Cas. 27; 13 L. J., Q. B. 58.

Trial of Prisoners Separately—Discretion.]

—At petty sessions an information was laid against two persons charging that they did use a gun and kill two pheasants contrary to 1 & 2 Will. 4, c. 32, s. 3; each claimed to be tried separately in order to call the other as a witness; the justices refused, and heard the charge against both together, and convicted them, and a conviction was drawn up separately against each of them, imposing a penalty of 3*l.*—Held, that it was in the discretion of the justices whether they would hear the charge separately or not; that, as the penalty was imposed upon every person acting in contravention of the statute, each was separately liable to the whole penalty, and that separate convictions were right. *Reg. v. Littlechild*, *Reg. v. Heslop*, 6 L. R., Q. B. 293; 40 L. J., M. C. 137; 24 L. T. 233; 19 W. R. 748.

c. Apprehension of Offenders.

When justified.]—To justify the apprehension of a person under 1 & 2 Will. 4, c. 32, s. 31, he must have been required to quit the land, and to tell his name; and the wilfully continuing or returning upon the land, to justify an apprehension, must be upon the same land, and for the purpose of pursuing game there. *Rea v. Long*, 7 C. & P. 314.

To justify the apprehension of an offender under 1 & 2 Will. 4, c. 32, s. 31, it is only necessary that he should have been made to understand, by the person authorized under that section, that he is required to tell his christian name, surname, and place of abode, and that he should have refused to comply with such requisition. It is not necessary that he should have been required both to quit the land and also to tell his name. *Reg. v. Prestney*, 3 Cox, C. C. 505.

A warrant for neglecting to appear to a summons for trespass in search of coney, under 1 & 2 Will. 4, c. 32, s. 30, was issued against C., directed to all the peace officers in the county. A peace officer in the county met C. and said he apprehended him under this warrant, but the warrant was not in his possession at the time. C. resisted, and, having severely injured the officer, escaped, but afterwards surrendered himself. The justices fined him 10*s.* for the trespass, and sentenced him to six months' hard labour for assaulting the officer in the execution of his office:—Held, that the arrest under the circumstances would not have been in the execution of the constable's office, and that the conviction for assault must be quashed. *Codd v. Cobe*, 1 Ex. D. 352; 45 L. J., M. C. 101; 34 L. T. 453; 13 Cox, C. C. 202.

Action against two for assaulting the plaintiff, and tearing his clothes. A plea stated, that

before the committing those trespasses the plaintiff was found by the defendants on the lands of S. in search of game, without his licence and against his will, and that the plaintiff had in his possession a hare, which appeared to have been recently killed. Whereupon one defendant, as servant of and by command of S., demanded the hare, which the plaintiff refused to deliver; that the said defendant demanded the hare from the plaintiff, and because he refused to deliver it, and kept it in his possession, both defendants, as such servants, and by such command, in order to take the same for the use of S., seized the plaintiff, and took it from him according to 1 & 2 Will. 4, c. 32, s. 36. Another plea stated, that just before the trespasses, the plaintiff had in his possession a dead hare belonging to S. without his leave and licence, wherefore the defendants did, as his servants, and by his command, demand the same from the plaintiff, which he refused to deliver, and which he detained, whereupon the defendants, as such servants, seized the plaintiff (concluding as in the former plea):—Held, that the first plea was bad, for not sufficiently shewing when the second demand was made, or that it was made on the land of S.; and that the second plea was also bad, for not stating that the defendants gently laid their hands on the plaintiff in order to take the game, and that because he resisted, they necessarily committed the trespasses complained of, doing as little damage, and using as little violence to the plaintiff as they could on that occasion. *Wisdom v. Hodson*, 3 Tyr. 811.

Belief that Person had Authority.]—In an action for assault and taking away the plaintiff's game certificate and gun, it appeared, that after the plaintiff had given his name and place of abode, the defendant pushed him out of the field into a public road, and then took away his gun. The defendant alleged that he had acted under 1 & 2 Will. 4, c. 32, s. 31, and was entitled to notice of action:—Held, that the judge was right in leaving it to the jury whether defendant acted on the belief that he had authority under 1 & 2 Will. 4, c. 32, and whether he had reasonable ground for that belief. *Cox v. Reid*, 13 Q. B. 558; 18 L. J., Q. B. 216; 13 Jur. 563.

d. Ousting Jurisdiction of Justices.

Adjournment asked to Produce Evidence of Authority.]—On the hearing of an information for trespassing in pursuit of game, it was stated by the parties that they had authority from the owner of the land; but being not prepared to prove that fact, they asked for an adjournment:—Semble, that this was a claim of right on a matter which would be a defence to an action; and therefore, under the proviso in s. 30 of 1 & 2 Will. 4, c. 32, the justices ought not to have proceeded to convict. *Reg. v. Cridland*, 7 El. & Bl. 853; 27 L. J., M. C. 28; 3 Jur., N. S. 1213.

B. was charged with trespass in pursuit of game, under 1 & 2 Will. 4, c. 32, s. 30, and was proved to have shot game on glebe land over which the rector of the parish had always exercised the privilege of sporting. The defence of B. was that he was game watcher, employed by three gentlemen who were proved to rent shooting from the lord of the manor, and that the

lord claimed the shooting over part of the glebe under an inclosure act. He proved that his employers ordered him to go upon this land, but he produced no evidence, although an adjournment was offered for that purpose, that the land upon which the alleged trespass was committed was included in the lands over which his employers' shooting extended, nor in the disputed part of the glebe. The magistrate decided that he had no *bonâ fide* claim of right to shoot on this particular land, and convicted him of the trespass:—Held, that, under the circumstances, the magistrate was justified in convicting. *Birnie v. Marshall*, 35 L. T. 373.

Bonâ fide Question of Title.]—A question of title *bonâ fide* raised in the course of proceedings, on an information, before justices, for trespassing in pursuit of game, operates to oust the jurisdiction of the justices, and their proper course is to dismiss the charge. *Legg v. Pardee*, 9 C. B., N. S. 289; 30 L. J., C. P. 108; 7 Jur., N. S. 499; 3 L. T. 371; 9 W. R. 234.

The *bona fides* of the claim is for the justices to determine. *Id.*

M. laid an information against A. for trespassing in pursuit of game, under 1 & 2 Will. 4, c. 32 (Game Act), s. 30. At the hearing he gave evidence that the lords of the manor had, in 1815, granted the right of shooting, down to the present time, and that he was then renting the shooting of them. On A.'s part it was alleged that he had a lease from the lords of the manor of the lands said to be trespassed upon, dated 1859, in which there was no reservation of a right to the game, and that the alleged trespass was committed in the assertion of his right to the game. The justices having convicted A.:—Held, that under the circumstances, the claim of right having been *bonâ fide* made, the jurisdiction of the justices was ousted. *Adams v. Masters*, 24 L. T. 502.

The tenant of a farm under a lease which reserved the game to the lessor, but did not expressly say that it did so exclusively, shot three hares in the presence of the keeper to assert his right. He set up this claim of right on the hearing of an information against him before the justices, and alleged that it ousted their jurisdiction. They found that the claim was not *bonâ fide*, because he had a copy of the lease, and convicted him:—Held, that this finding as to the *bona fides* was not conclusive, because there was no evidence that his claim was made *malâ fide*; and that as he asserted his claim of right the magistrates had no jurisdiction to hear the information. *Lovesy v. Stallard*, 30 L. T. 792.

A trespasser in search of game set up as a defence, under 1 & 2 Will. 4, c. 32, s. 30, the leave and licence of the occupier under a parol lease. The occupier denied that the game was reserved; evidence was given to show that it was:—Held, that the defence was not *bonâ fide*, and, therefore, the jurisdiction of the justices was not ousted. *Reg. v. Critchlow*, 26 W. R. 681.

Seemly, that if there is any evidence to shew that the game is reserved, it becomes a question of fact to be decided by the justices. *Id.*

Where a party made a claim of right to shoot over lands as lord of a manor, and gave in evidence in support of such right, certain documents of title and an inclosure act, but the justices convicted him on the ground that he did not *bonâ fide* believe, when he committed the

trespass, that he had any such right as that claimed by him; the court quashed the conviction on the ground that there was evidence of the *bona fides* of the claim set up. *Reg. v. Derbyshire Justices*, 11 W. R. 780.

Title alleged must be of Party himself, not of Third Person.]—Where proceedings for trespassing on land in pursuit of game are taken before justices against a person who raises a question of title, he must allege such title to be in himself, and not in a third person; and it is the province of the justices to determine whether or not such claim has a reasonable foundation. *Cornwell v. Sanders*, 3 B. & S. 206; 32 L. J., M. C. 6; 9 Jur., N. S. 540; 7 L. T. 356; 11 W. R. 87.

Mere Assertion.]—A person charged with trespassing in pursuit of game in the day-time on land in the occupation of a tenant to A., set up a claim of right to shoot over the land, on the ground that he and every one who chose had always shot there till some recent acts of interruption, and declared his readiness to try the right with A.:—Held, that the mere assertion of such a general right in himself and every one else, though he really believed it, without shewing any such claim of right as would be a defence to an action of trespass, did not oust the jurisdiction of the magistrates to convict. *Leatt v. Vine*, 30 L. J., M. C. 207; 8 L. T. 581.

Mere Belief of Title.]—It is not sufficient to oust the jurisdiction of the justices in regard to a charge of trespass in pursuit of game under 1 & 2 Will. 4, c. 32, that there is an honest claim of right, if such claim is absurd and impossible in point of law. The question is whether a reasonable claim of right is involved, and not one of *mens rea*, inasmuch as the statute is not a mere criminal statute, but is intended for the protection of the peculiar rights of persons entitled to shoot game. *Watkins v. Major*, 10 L. R., C. P. 662; 44 L. J., M. C. 164; 33 L. T. 352; 24 W. R. 164.

An information was preferred against the appellant for killing a rabbit, contrary to 1 & 2 Will. 4, c. 32, s. 30. At the hearing it was proved that E. claimed to be lord of the manor, and a witness stated that the manor had belonged to two persons, who were predecessors in title to E. A deputation was also produced, which appeared to have been duly enrolled by the clerk of the peace of the county, by which T. was appointed gamekeeper for and within the manor. The witness also stated that he had known the common for forty years, and had always believed it to be part of the manor, and that E. had allowed him to shoot over the common. The appellant went by direction of his father on to the common and there shot a rabbit. The father had previously acquired a lease of some land near the common, and had built a house on it. He claimed in respect of this land, as one of the commoners, a right of killing rabbits on the common, but no evidence was adduced that any of the commoners had ever claimed or exercised a right of killing rabbits on the common. The claim to kill rabbits was made by the appellant and his father *bonâ fide*, and the justices having convicted the appellant:—Held, first, that there was evidence that the manor existed, that the common was within it, and that E. was the lord of it. *Id.*

Held, secondly, that as the appellant had given no sufficient evidence of a right justifying him in killing the rabbit, he was properly convicted, although he bona fide believed himself to be entitled to shoot the rabbit. *Ib.*

The mere belief of a person, however bona fide, in the existence of the right asserted, is insufficient, unless accompanied by some colour for the claim, to oust the jurisdiction of the justices. *Cornwell v. Sanders*, 3 B. & S. 206; 32 L. J., M. C. 6; 9 Jur., N. S. 540; 7 L. T. 356; 11 W. R. 87.

Reasonable Claim of Right.—A person being summoned before justices for trespassing in pursuit of game upon waste and common land in the occupation of the lord of the manor, denied such occupation, alleging the proprietorship of the land to be in third parties. There was some evidence in support of the claim of the lord, but the evidence preponderated considerably in favour of the title as set up by the party trespassing. The justices having convicted him:—Held, that the court would not impugn their decision. *Ib.*

An information was laid against K. for a trespass in pursuit of game. At the hearing, he gave in evidence a lease, dated 1794, for ninety-nine years, of the land upon which the trespass was alleged to have been committed, to a party through whom he claimed, the lessor being the party through whom the informant claimed the right to the game. The lease contained the following reservation to the lessor: "and also liberty to hawk, hunt, set and fowl in and upon the demised premises during the term hereinafter granted." K. having set up his title through the lessee to take game upon the land, and so disputed the right of the justices to adjudicate, they held that the claim of right was not sufficient to oust their jurisdiction, and convicted him:—Held, that the objection being made bona fide, it was a reasonable one, and that the jurisdiction of the justices was ousted. *Reg. v. Kayley*, 10 L. T. 339.

e. Evidence.

Competency of Witnesses.—An information before justices under 1 & 2 Will. 4. c. 32, s. 23, for using an engine for the purpose of taking game without the authority of a certificate, is a criminal proceeding in which the party is charged with the commission of an offence punishable on summary conviction, within 14 & 15 Vict. c. 99, s. 3; and therefore the party charged is not competent or compellable to give evidence for or against himself. *Cuttell v. Ireson*, 1 El. & Bl. 91; 27 L. J., M. C. 167; 4 Jur., N. S. 560.

Production of Deed giving Right of Shooting.—A landowner, by deed, granted the right of shooting to G. over land, of which B. afterwards became occupier. Upon an information against B. for entering and being in the day-time upon land in search of and in pursuit of game (the land being that in his own occupation), G. deposed that he had the exclusive right of shooting over the same, and that he had given no authority to B. to shoot, but the deed was not put in evidence. The justices having convicted:—Held, that the conviction, unsupported by the pro-

duction of the deed, was wrong. *Barker v. Davis*, 34 L. J., M. C. 140; 11 Jur., N. S. 651.

Parol Evidence of what Party said before Magistrate.—Parol evidence of what a party says before a magistrate, on the hearing of a case of trespass, under 1 & 2 Will. 4, c. 32, s. 30, is admissible, although, in fact, what he said was taken down; as this is not a case in which it is the magistrate's duty to take down what is said before him. *Robinson v. Vaughton*, 8 C. & P. 252.

Right exercised for Seven Years.—Evidence that a party has exercised the right of killing game for seven years upon land is *prima facie* evidence of the right under 1 & 2 Will. 4, c. 32, s. 36, which makes it lawful for any person having the right of killing the game upon any land, to seize game recently killed, found in the possession of any person upon such land in pursuit of game. *Reg. v. Wall*, 2 Cox, C. C. 288.

Trespass with Dogs where Hares seen.—To sustain a charge of trespass in pursuit of game, brought under the 27 & 28 Vict. c. 67, the only evidence given on behalf of the complainants to prove the commission of the offence was, that the defendant, with two greyhounds, was trespassing on lands of the complainants where hares had been frequently seen, and that he went away on being called on to stop by a caretaker of the complainants. The caretaker deposed that he believed the defendant was beating for hares:—Held, that there was no evidence that the defendant had committed an offence under the statute. *Kingston (Countess) v. O'Neill*, 6 L. R., Ir. 101; 14 Cox, C. C. 466.

f. Convictions.

Form and Validity.—In a conviction for a trespass in the daytime, under 1 & 2 Will. 4, c. 32, s. 30, the words "enter and be" constitute only one offence. *Ree v. Mellor*, 2 D. P. C. 173.

The place of committing the trespass may be described in the conviction as certain land, without giving it a name, or setting it out with abutments. *Ib.*

As, by s. 45, the conviction itself cannot be removed out of the inferior court, a verified copy may be used to ascertain whether the conviction is valid. *Ib.*

After a conviction by two justices under 1 & 2 Will. 4, c. 32, s. 30, and before any formal conviction had been drawn up, one of such justices changed his mind, and together with a third justice who had not heard the case, but without the concurrence of the other justice who had convicted, reversed such conviction:—Held, that such reversal was irregular, but that as no conviction had been drawn up there was no good conviction existing, and the whole proceeding was a miscarriage. *Jones v. Williams*, 46 L. J., M. C. 270; 36 L. T. 559.

Imposition and Payment of Penalties.—By 1 & 2 Will. 4, c. 32, s. 37, every penalty for any offence against that act is to be paid to some one of the overseers of the poor, or to some other officer (as the convicting justice or justices may direct) of the parish in which the offence shall

have been committed; to be by such overseer or officer paid over to the use of the general county rate; but by 5 & 6 Will. 4, c. 20, s. 21, reciting the former act, it is enacted, that one moiety of all such penalties shall go and be paid to the person who shall inform and prosecute for the same, and the other moiety only shall go and be paid to such overseer or officer, and be by him applied in manner before directed:—Held, that a conviction for an offence against the former act, which directed the whole penalty to be paid “to W. J., one of the overseers of the poor of the parish, &c., to be by him applied according to the directions of the statute in such case made and provided,” is bad. *Griffith v. Harries*, 2 M. & W. 335; M. & H. 8; 1 Jur. 57.

A conviction for trespassing in search of game in the daytime, under 1 & 2 Will. 4, c. 32, s. 30, included four persons, and adjudicated that “each of them, the said J. C., J. B., W. W., and J. S., so making default, shall be imprisoned for one month, unless the said several sums, and the costs and charges of conveying each of them, the said J. C., J. B., W. W., and J. S., so making default, to gaol, shall be sooner paid.”—Held, that it made each to be imprisoned until the costs of conveying all to gaol had been paid, and therefore was bad, inasmuch as the 11 & 12 Vict. c. 43, s. 23, only made each liable for the costs of conveying him to gaol. *Reg. v. Cridland*, 7 El. & Bl. 853; 3 Jur., N. S. 1213.

A conviction for killing a pheasant contrary to s. 3 of the 1 & 2 Will. 4, c. 32, following the form given in schedule (I. 2) to 11 & 12 Vict. c. 43, adjudged the offender to forfeit and pay a penalty, “to be paid and applied according to law.” By 1 & 2 Will. 4, c. 32, s. 37, and by 5 & 6 Will. 4, c. 20, s. 21, the penalty is directed to be paid, one half to the informer, and one half to some one of the overseers of the poor, or to some other officer (as the convicting justice or justices may direct) of the parish in which the offence shall have been committed:—Held, that the conviction was sufficient, by virtue of 11 & 12 Vict. c. 43, ss. 17, 32, being in the form given by the schedule to that act referred to in s. 17, though it did not in terms distribute the penalty, nor name the informer or the overseer to whom the penalty was to be paid. *Reg. v. Hyde*, 7 El. & Bl. 859, n; 21 L. J., M. C. 94; 16 Jur. 337.

A conviction under 1 & 2 Will. 4, c. 32, s. 3, adjudged the defendant to pay a fine of 5s., “to be paid and applied according to law,” and in default of payment to be imprisoned for two months:—Held, that the justices had no jurisdiction to order the defendant to be imprisoned, as the imprisonment was conditional on the non-payment of the penalty, and they had not, by the conviction, directed the manner in which the penalty should be paid, as required by 5 & 6 Will. 4, c. 20, s. 21. *Hyde, Ex parte*, 15 Jur. 803.

Quashing—No Notice of Objection.—A party summarily convicted appealed under 1 & 2 Will. 4, c. 32, giving notice of several objections on the merits. By the conviction, when returned to the sessions, it appeared that the party was adjudged to pay the penalty forthwith, and that nothing was said of imprisonment in case of default. The sessions quashed the conviction on this ground, stating in their order that they quashed it for want of form. The objection was not taken in the notice of appeal, nor did it ap-

pear that the appellant, when he gave the notice, had means of knowing how the conviction would be framed:—Held, that, assuming the conviction to be defective in substance, the sessions had no power to quash it on this objection, no notice of it having been given. *Rea v. Boulbee*, 4 A. & E. 498; 6 N. & M. 26; 1 H. & W. 713.

Barring Actions.—A. ordered and authorized B. to sport over the lands of C., which he did. D., by the assent of C., laid an information before a magistrate against B. for the trespass under 1 & 2 Will. 4, c. 32, s. 30. The magistrate dismissed the complaint:—Held, in an action by C. against A. and B. for this trespass, that the proceedings before the magistrate were a bar to the action both as to A. and B., under s. 46; and that to be a bar, it was not necessary that the magistrate should convict of the trespass, it being sufficient if he adjudicated between the parties. *Robinson v. Vaughton*, 8 C. & P. 242.

3. UNLAWFUL POSSESSION OF GAME.

Evidence.—A common carrier between B. and R. was met by a police constable coming along the turnpike road to R. with his horse and cart. The constable, suspecting that he had been unlawfully on land in pursuit of game, asked him if he had any game in his cart, to which he replied that he had only a few rabbits. The constable then searched the cart, and found in a basket, beneath the rabbits, a pheasant, nine partridges (three of which had been shot, and six netted), and two hares (one of which had been shot, and the other trapped). The game was wet, and had been recently killed; and the boots of the carrier (who fainted when the game was discovered) were dirty, although the road was dry. The justices who convicted him found that “no evidence was given on the one hand to shew that the game was unlawfully obtained, or on the other hand to shew that it was lawfully obtained:”—Held, that the foregoing circumstances did not constitute sufficient evidence on which he could be convicted of having obtained game by unlawfully going on land in search or pursuit of game within 25 & 26 Vict. c. 114, s. 2. *Jones v. Dicker*, 22 L. T. 95.

Two men were seen together by a policeman on the 16th of December on a highway, about half-past nine P.M. One had a net under his arm for catching hares. Nothing else was found on either of them; but they had a lurcher with them. The policeman had heard a dog yelping as if in chase of a hare or rabbit a little time before these men came along the road. The night was damp, and the net was wet. They were both convicted under 25 & 26 Vict. c. 114, s. 2:—Held, that there was evidence to support the conviction: for that it was not necessary that they should have caught any game: it was sufficient if they had used the net for the purpose, though unsuccessfully, of which there was evidence. *Jenkin v. King*, or *Reg. v. Cornwall Justices*, 7 L. R., Q. B. 478; 41 L. J., M. C. 145; 26 L. T. 428; 20 W. R. 669.

Jurisdiction.—In order to give jurisdiction to magistrates to convict of an offence under 25 & 26 Vict. c. 114, s. 2, it is necessary that the game or instruments for killing or taking game should be seized and detained on the highway. *Turner*

v. *Morgan*, 10 L. R., C. P. 587; 44 L. J., M. C. 161; 33 L. T. 172; 23 W. R. 659.

A man, whilst going in a cart along a highway, was required to stop by a constable. He drove off without obeying the order to stop, and shortly afterwards delivered to G. several rabbits, of which the constable subsequently took possession:—Held, that, as the rabbits were not seized by the constable whilst they were in his possession upon the highway, he could not be convicted under 25 & 26 Vict. c. 114, s. 2. *Ib.*

4. HARES AND RABBITS.

Statutes.]—By 24 & 25 Vict. c. 96, s. 17, *who-soever shall unlawfully and wilfully, between the expiration of the first hour after sunset and the beginning of the last hour before sunrise, take or kill any hare or rabbit in any warren or ground lawfully used for the breeding or keeping of hares or rabbits, whether the same be inclosed or not, shall be guilty of a misdemeanor;*

And whosoever shall unlawfully and wilfully, between the beginning of the last hour before sunrise and the expiration of the first hour after sunset, take or kill any hare or rabbit in any such warren or ground, or shall at any time set or use therein any snare or engine for the taking of hares or rabbits, shall, on conviction thereof, before a justice of the peace, forfeit and pay such sum of money, not exceeding 5l., as to the justice shall seem meet; provided that nothing in this section contained shall affect any person taking or killing in the day-time any rabbits on any sea bank or river bank in the county of Lincoln, so far as the tide shall extend, or within one furlong of such bank. (With the exception of the substitution of defined hours for "night-time" and "day-time," similar to former provision, 7 & 8 Geo. 4, c. 29, s. 30.)

By 43 & 44 Vict. c. 47 (The Ground Game Act, 1880), provision is made for the better protection of occupiers of land against injury to their crops from ground game.

Taking—What is.]—Taking a rabbit in a wire was sufficient to constitute an offence within 5 Geo. 3, c. 14, s. 6, though the rabbit was not killed, and though the party never took it away. *Rea v. Glover*, R. & R. C. 269.

In what Place.]—Destroying rabbits in the night-time, in a rick-yard in which they were kept, was not within 7 & 8 Geo. 4, c. 29, s. 30. *Rea v. Garratt*, 6 C. & P. 369.

The Subject of Larceny.]—*See ante*, LARCENY.

XXXI. POISONING.

1. PLACING POISON IN PLANTATIONS.

27 & 28 Vict. c. 115, amends the 26 & 27 Vict. c. 113, and prohibits the placing of poisoned flesh and poisonous matters in plantations, fields and open places.

2. MURDER BY.—*See ante*, MURDER, &c.

3. ADMINISTERING POISON WITH INTENT TO MURDER.—*See ante*, MURDER, &c.

4. TO PROCURE ABORTION.—*See ante*, MURDER, &c.

XXXII. PRIZE-FIGHTS,

Prize-Fight Expected—Duty of Magistrates.]

—Where a prize-fight is expected, the magistrates ought to cause the intended combatants to be brought before them, and compel them to enter into securities to keep the peace till the assizes or sessions; and if they refuse to enter into such securities, to commit them. *Row v. Billingham*, 2 C. & P. 234.

Whether Presence at Prize-Fight constitutes an Assault.]

—Persons who are present at a prize-fight and who have gone thither with the purpose of seeing the persons strike each other, are all principals in the breach of the peace, and indictable for an assault, as well as the actual combatants, and it is not at all material which of the combatants struck the first blow. *Rea v. Perkins*, 4 C. & P. 537.

All prize-fights are illegal, and all persons engaged in them are punishable by law. *Reg. v. Brown*, Car. & M. 314.

Two men fought with each other in a ring, formed by ropes supported by posts, in the presence of a large crowd. Amongst that crowd were the prisoners. It did not appear that the prisoners took any active part in the management of the fight, or that they said or did anything. They were tried and convicted of assault as being principals in the second degree. The jury were directed that prize-fights are illegal, and that all persons who go to a prize-fight to see the combatants strike each other and who are present when they do so, are guilty in law of an assault, and that if the persons charged were not casually passing by, but stayed at the place, they encouraged the fight by their presence, although they did not do or say anything. Upon this direction the jury found the prisoners guilty; but added, that they did so in consequence of such direction of law, as they found that the prisoners did not aid or abet:—Held, by Denman, J., Huddleston, B., Manisty, Hawkins, Lopes, Stephen, Cave, and North, JJ., (Lord Coleridge, C. J., Pollock, B., and Mathew, J., dissenting,) that the above direction was not correct, that mere voluntary presence at a fight does not as a matter of law necessarily render persons so present guilty of an assault as aiding and abetting in such fight, and that the conviction could not be sustained. *Reg. v. Concy*, 8 Q. B. D. 534; 51 L. J., M. C. 66; 46 L. T. 307; 30 W. R. 678; 46 J. P. 404; 15 Cox, C. C. 46.

Held, by Lord Coleridge, C. J., Pollock, B., and Mathew, J., that the conviction could be sustained, that the legal inference to be drawn from mere presence, as a voluntary spectator, at a prize-fight is, in the absence of other evidence to rebut such inference, that the person so present is encouraging, aiding, and abetting such fight, and consequently guilty of assault. *Ib.*

Held, by the whole court, that a prize-fight is illegal, and that all persons aiding and abetting therein are guilty of assault, and that the consent of the persons actually engaged in fighting to the interchange of blows does not afford any answer to the criminal charge of assault. *Ib.*

Seemable, that mere presence of a person, unexplained, at a prize-fight affords some evidence for the consideration of a jury of an aiding or abetting in such fight. *Ib.*

Whether a Prize-Fight or Sparring Match.

—The spectators of a sparring match are not participes criminis, so that their evidence, touching what occurred at the match, requires corroboration. *Reg. v. Young*, 10 Cox, C. C. 371.

There is nothing unlawful in sparring, unless, perhaps, the men fight on until they are so weak that a dangerous fall is like to be the result of the continuance of the game. Therefore, except in the latter case, death caused by an injury received during a sparring match does not amount to manslaughter. *Ib.*

Divers persons assembled in a room, entrance money being paid, to witness a fight between two persons. The combatants fought in a ring with gloves, each being attended by a second, who acted in the same way as at prize-fights. The combatants fought for about forty minutes with great ferocity, and severely punished each other. The police interfered and arrested the defendants, who were among the spectators. Upon the trial of an indictment against them for unlawfully assembling together for the purpose of a prize-fight, the chairman directed the jury that, if it was a mere exhibition of skill in sparring, it was not illegal; but if the parties met intending to fight till one gave in from exhaustion or injury received, it was a breach of the law and a prize-fight, whether the combatants fought in gloves or not, and left it to the jury to say whether it was a prize-fight or not:—Held, that the jury was properly directed. *Reg. v. Orton*, 39 L. T. 292.

XXXIII. RAILWAYS AND TELEGRAPHS.

1. *Endangering Safety of Persons on Railways.*
2. *Obstructing Engines or Carriages*, 599.
3. *Injuring Telegraphs*, 600.

1. ENDANGERING SAFETY OF PERSONS ON RAILWAYS.

Statute.—By 24 & 25 Vict. c. 100, s. 32, *whoever shall unlawfully and maliciously put or throw upon or across any railway any wood, stone or other matter or thing, or shall unlawfully and maliciously take up, remove or displace any rail, sleeper or other matter or thing, belonging to any railway, or shall unlawfully and maliciously turn, move or divert any points or other machinery belonging to any railway, or shall unlawfully and maliciously make or shew, hide or remove any signal or light upon or near to any railway, or shall unlawfully and maliciously do or cause to be done any other matter or thing, with intent, in any of the cases aforesaid, to endanger the safety of any person travelling or being upon such railway, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and, if a male under the age of sixteen years, with or without whipping.* (Former provision, 14 & 15 Vict. c. 19, s. 6.)

By s. 33, *whoever shall unlawfully and maliciously throw or cause to fall or strike at, against, into or upon any engine, tender, carriage or truck used upon any railway, any wood, stone or other matter or thing, with intent to injure or*

endanger the safety of any person being in or upon such engine, tender, carriage or truck, or in or upon any other engine, tender, carriage or truck of any train of which such first-mentioned engine, tender, carriage or truck shall form part, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour. (Former provision, 14 & 15 Vict. c. 19, s. 7.)

Throwing Stones at Engines or Carriages.]—

A person throwing a stone at engines or carriages using a railway, might be indicted under 3 & 4 Vict. c. 97, s. 15, for doing an act to endanger the safety of persons conveyed on the railway; and the indictment might contain a count at common law for throwing the stone at the carriages. *Reg. v. Bouray*, 10 Jur. 211.

To constitute a felony under 14 & 15 Vict. c. 19, s. 7, it was necessary that the stone or other thing used should be thrown against and strike an engine, tender, carriage or truck, having a person or persons in or upon it; and, therefore, although a stone may be thrown at a train with intent to injure persons being therein, yet, if it strikes a carriage or tender not having any person in or upon it at the time, the felony is not proved. *Reg. v. Court*, 6 Cox, C. C. 202.

On an indictment under 14 & 15 Vict. c. 19, s. 7, for maliciously throwing stones into a railway carriage, with intent to endanger the safety of any person in it, there must be evidence of an intent to do some grievous bodily harm, such as would support an indictment for wounding a particular person with that intent; and, if it appears that the prisoner's intention was only to commit a common assault on some person in the carriage, he must be acquitted. *Reg. v. Rooke*, 1 F. & F. 107.

On an indictment for wilfully and maliciously casting anything upon a railway carriage or truck, either with intent to injure it or to endanger the safety of persons in the train; there may be a case for the jury, although the train is a goods train, and there was no person on the particular truck, but there must be proof of the intent to endanger the safety of persons in it. *Reg. v. Sanderson*, 1 F. & F. 37.

Evidence.—On an indictment under 3 & 4 Vict. c. 97, s. 15, for unlawfully and wilfully doing anything to endanger the safety of persons conveyed in or upon any railway, it was unnecessary to allege or prove that the railway was constructed or worked under the powers of an act of parliament. *Reg. v. Bouray*, 10 Jur. 211.

By Unlawful Act, Omission or Neglect.—By 24 & 25 Vict. c. 100, s. 34, *whoever, by any unlawful act, or by any wilful omission or neglect, shall endanger or cause to be endangered the safety of any person conveyed or being in or upon a railway, or shall aid or assist therein, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour.* (Former provision, 3 & 4 Vict. c. 97, s. 15.)

Two boys went upon premises of a railway company and began playing with a heavy cart, which was near the line. Having started the

cart, it ran down the embankment by its own impetus. One boy tried to divert its course; the other cried to him, "Let it go." The cart ran on without pushing, until it passed through a hedge and a fence of posts and rails, and over a ditch on to the railway; it rested so close to the railway lines as to obstruct any carriages passing upon them. The boys did not attempt to remove it:—Held, that as the first act of moving the cart was a trespass, and therefore an unlawful act, and as the jury found that the natural consequence of it was that the cart ran through the hedge, and so on to the railway, the boys might be properly convicted under 24 & 25 Vict. c. 100, s. 34. *Reg. v. Monaghan*, 11 Cox, C. C. 608; 23 L. T. 168.

The neglect of the driver and stoker of a railway engine to keep a good look out for signals, according to the rules and regulations of the railway company, the consequence of which neglect is, that a collision occurs, and the safety of passengers is endangered, was not an offence within 3 & 4 Vict. c. 97, s. 15. *Reg. v. Pardon-ton*, 6 Cox, C. C. 247.

2. OBSTRUCTING ENGINES OR CARRIAGES.

Statute.]—By 24 & 25 Vict. c. 97, s. 35, *whosoever shall unlawfully and maliciously put, place, cast or throw upon or across any railway any wood, stone, or other matter or thing, or shall unlawfully and maliciously take up, remove or displace any rail, sleeper, or other matter or thing belonging to any railway, or shall unlawfully and maliciously turn, move or divert any points or other machinery belonging to any railway, or shall unlawfully and maliciously make or shew, hide or remove, any signal or light upon or near to any railway, or shall unlawfully and maliciously do or cause to be done any other matter or thing, with intent, in any of the cases aforesaid, to obstruct, upset, overthrow, injure or destroy any engine, tender, carriage, or truck using such railway, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and, if a male under the age of sixteen years, with or without whipping. (Former provisions, 3 & 4 Vict. c. 97, s. 15, and 14 & 15 Vict. c. 19, s. 6.)*

By s. 36, *whosoever, by any unlawful act, or by any wilful omission or neglect, shall obstruct or cause to be obstructed any engine or carriage using any railway, or shall aid or assist therein, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour. (Former provision, 3 & 4 Vict. c. 97, s. 15.)*

Maliciously.]—The prisoners placed a stone upon a line of railway, so as to cause an obstruction to any carriages that might be travelling thereon:—Held, that if this was done maliciously, and with an intention to obstruct the carriages of the company, the jury would be justified in finding that it was done maliciously. *Reg. v. Upton*, 5 Cox, C. C. 298.

Upon an information before justices on behalf of a railway company, for an offence against its act of incorporation, in placing stones and rubbish on the railway, and thereby obstructing the free passage of the same, evidence that the act was done by certain persons employed by the defendant to repair a wall between the railway and his premises adjoining; and that on one occasion the defendant himself, who was standing by, nodded his head, and directed the workman to go on, is sufficient to warrant the justices in convicting the defendant. *Roberts v. Preston*, 9 C. B., N. S. 208.

What is an Obstruction.]—A man unlawfully altered some railway signals at a railway station. The alteration caused a train, which would have passed the station without slackening speed, to come nearly to a stand. Another train going in the same direction, and on the same rails, was due at the station in half an hour:—Held, that he had obstructed a train within the meaning of 24 & 25 Vict. c. 97, s. 36. *Reg. v. Hadfield*, 1 L. R., C. C. 253; 39 L. J., M. C. 131; 22 L. T. 664; 18 W. R. 955; 11 Cox, C. C. 574.

A man, who was not a servant of a railway company, stood on a railway between the two lines of rails, at a point between two stations. As a train was approaching he held up his arms in the mode used by inspectors of the line when desirous of stopping a train between two stations. This, as he intended that it should, caused the driver to shut off steam and diminish the speed, and led to a delay of four minutes:—Held, that he had obstructed a train within the meaning of 24 & 25 Vict. c. 97, s. 36. *Reg. v. Hardy*, 1 L. R., C. C. 278; 40 L. J., M. C. 62; 23 L. T. 785; 19 W. R. 359; 11 Cox, C. C. 656.

A party was liable to be indicted under 3 & 4 Vict. c. 97, s. 15, if he designedly placed on a railway substances having a tendency to produce obstruction to the carriages, though he might not have done the act expressly with that object. *Reg. v. Holroyd*, 2 M. & Rob. 339.

B. placed a truck across a railway line, in such a manner that if a carriage or engine had come along the line, it would have been obstructed, and the safety of passengers, who might have been in any such carriage, would have been endangered. The railway had not opened for passenger traffic, and no carriage or engine was in fact obstructed:—Held, that he was guilty of a misdemeanor, under 3 & 4 Vict. c. 97, s. 15. *Reg. v. Bradford*, Bell, C. C. 268; 8 Cox, C. C. 309; 29 L. J., M. C. 171; 6 Jur., N. S. 1102; 2 L. T. 392; 8 W. R. 531.

3. INJURING TELEGRAPHS.

Statute.]—By 24 & 25 Vict. c. 97, s. 37, *whosoever shall unlawfully and maliciously cut, break, throw down, destroy, injure, or remove any battery, machinery, wire, cable, post, or other matter or thing whatsoever, being part of or being used or employed in or about any electric or magnetic telegraph, or in the working thereof, or shall unlawfully and maliciously prevent or obstruct in any manner whatsoever the sending, conveyance, or delivery of any communication by any such telegraph, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any*

Act done by Servants of the Defendant.]

term not exceeding two years, with or without hard labour; provided, that if it shall appear to any justice, on the examination of any person charged with any offence against this section, that it is not expedient to the ends of justice that the same should be prosecuted by indictment, the justice may proceed summarily to hear and determine the same, and the offender shall, on conviction thereof, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding three months, or else shall forfeit and pay such sum of money, not exceeding 10*l.*, as to the justice shall seem meet.

By s. 38, whosoever shall unlawfully and maliciously, by any overt act, attempt to commit any of the offences in the last preceding section mentioned, shall, on conviction thereof before a justice of the peace, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding three months, or else shall forfeit and pay such sum of money, not exceeding 10*l.*, as to the justice shall seem meet.

XXXIV. RAPE, ABUSE, AND DEFILEMENT OF WOMEN AND CHILDREN.

See MURDER AND OFFENCES AGAINST THE PERSON.

XXXV. RIOTS AND UNLAWFUL ASSEMBLIES.

1. *The Offence*.
2. *Duties of the Magistracy*, 603.
3. *Aiding and Assisting the Constabulary*, 605.
4. *Indictment*, 605.
5. *Evidence*, 606.
6. *Injuries to Property by Rioters*, 606.

1. THE OFFENCE.

Reading Proclamation, Effect of.—If, in reading the proclamation from the Riot Act, the magistrate omits to read the words "God save the King," at the end of it, persons remaining together for an hour after such reading of the proclamation could not be capitally convicted under 1 Geo. 1, stat. 2, c. 5, s. 1. *Rea v. Child*, 4 C. & P. 442.

If the proclamation is read several times, the hour is to be computed from the first reading. *Rea v. Woolcock*, 5 C. & P. 516.

A riot is not the less a riot, nor is an illegal meeting the less an illegal meeting, because the proclamation from the Riot Act has not been read, the effect of that proclamation being to make the parties guilty of a transportable offence if they do not disperse within an hour; but if that proclamation is not read, the common law offence remains, which is a misdemeanor. *Rea v. Furse*, 6 C. & P. 81.

Without any proclamation at all, if a meeting is illegal, a party who attends it, knowing it to be so, is guilty of an offence. *Id.*

What are Unlawful Assemblies.—Any as-

sembly of persons attended with circumstances calculated to excite alarm, is an unlawful assembly. *Reg. v. Neale*, 9 C. & P. 431.

If parties assemble together for a purpose, which, if executed, would make them riotous; but, having assembled, they do nothing, and separate without carrying their purpose into effect, this is an unlawful assembly. *Rea v. Birt*, 5 C. & P. 154.

A meeting called to adopt preparatory measures for holding a national convention, is an illegal meeting. *Reg. v. Furse*, 6 C. & P. 81.

Although a man may arm himself and his friends for the defence of the possession of his house against such as threaten to make an unlawful entry, he cannot lawfully do the same in defence of his close. *Rea v. Bangor (Bishop)*, 1 Russ. C. & M. 388.

If there is such an assembly that there would have been a riot if the parties had carried their purpose into effect, this is within 1 Geo. 1, stat. 2, c. 1, s. 1; and whether there was a cessation or not, is a question for the jury. *Rea v. Woolcock*, 5 C. & P. 516.

Any meeting assembled under such circumstances as, according to the opinion of rational and firm men, are likely to produce danger to the tranquillity and peace of the neighbourhood, is an unlawful assembly; and, in viewing this question, the jury should take into their consideration the hour at which the parties meet, and the language used by the persons assembled, and by those who addressed them, and then consider whether firm and rational men, having their families and property there, would have reasonable ground to fear a breach of the peace; as the alarm must not be merely such as would frighten any foolish or timid person, but must be such as would alarm persons of reasonable firmness and courage. *Reg. v. Vincent*, 9 C. & P. 91.

An assembly of great numbers of persons, which, from its general appearance and accompanying circumstances, is calculated to excite terror, alarm, and consternation, is generally criminal and unlawful. *Rea v. Hunt*, 1 Russ. C. & M. 388. See *Rea v. Hunt*, 3 B. & A. 566.

If persons assemble to obstruct the officers of the law, all so assembling are guilty of an unlawful assembly, whether a riot takes place or not. *Reg. v. McNaughten*, 14 Cox, C. C. 576.

Whether Presence is Essential.—On an indictment for a riot, persons are not liable merely on account of their having been present and among the mob, even although they had the power of preventing it, unless they by word or act helped, incited or encouraged it. *Reg. v. Atkinson*, 11 Cox, C. C. 330.

All those who assemble themselves together with an intent even to commit a trespass, the execution whereof causes a felony to be committed, and continue together abetting one another till they have actually put their design into execution, and also all those who are present when a felony is committed, and abet the doing of it, are principals in the felony. *Reg. v. Howell*, 9 C. & P. 437.

If persons are assembled together to the number of three or more, and speeches are made to those persons to excite and inflame them, with a view to incite them to acts of violence, and if that same meeting is so connected in point of circumstances with a subsequent riot, that you cannot

reasonably sever the latter from the incitement that was used, those who incited are guilty of the riot, although they are not present when it occurs. *Reg. v. Sharpe*, 3 Cox, C. C. 228.

And all persons who join an assembly of this kind, disregarding its probable effect, and the alarm and consternation that are likely to ensue, and all who give countenance and support to it, are criminal parties. *Rev. v. Hunt*, 1 Russ. C. & M. 388.

No Intention of Carrying out Purpose Unlawfully.]—The appellants assembled with others for a lawful purpose, and with no intention of carrying it out unlawfully, but with the knowledge that their assembly would be opposed, and with good reason to suppose that a breach of the peace would be committed by those who opposed it:—Held, that they could not be rightly convicted of an unlawful assembly. *Beatty v. Gillbanks*, 9 Q. B. D. 308; 51 L. J., M. C. 117; 47 L. T. 194; 31 W. R. 275; 46 J. P. 789; 15 Cox, C. C. 138.

Indictment under Statute—Misdemeanor at Common Law.]—Two men were convicted upon an indictment which averred that they “unlawfully and riotously did assemble, and unlawfully, riotously, and with force, demolish and pull down the house of W., and pull down and scatter a rick of hay of W.:”—Held, that, upon the hypothesis that they had demolished the house, not feloniously, but in the assertion of a supposed right, the indictment could be sustained as for a misdemeanor at common law; that is, for a riot, with a statement of the demolition of the house as matter of aggravation. *Reg. v. Casey*, 8 Ir. R., C. L. 408.

Affray.]—An indictment for an affray which does not aver that the affray took place in a public street or highway is bad, and, upon error brought, will be quashed after verdict. *Reg. v. O'Neill*, 6 Ir. R., C. L. 1.

Illegal Training and Drilling.]—A count in an indictment, under 60 Geo. 3 & 1 Geo. 4, c. 1, the 1st section of which prohibits assemblies of persons for the purpose of unlawfully practising military exercise, and then goes on to impose a penalty on all persons who shall train or drill any other persons, or who shall be trained or drilled, is not bad for duplicity, though it charges the offence which is prohibited, and the offence for which a penalty is imposed. *Reg. v. Hunt*, 3 Cox, C. C. 215. See *Gogarty v. Reg.*, 3 Cox, C. C. 306.

2. DUTIES OF THE MAGISTRACY.

Generally.]—A magistrate called upon to suppress a riot is required by law to do all he knows to be in his power that can reasonably be expected from a man of honesty and of ordinary prudence, firmness and activity, under the circumstances. Mere honesty of intention is no defence, if he fails in his duty. *Rev. v. Pinney*, 3 B. & Ad. 946; 5 C. & P. 254.

Nor will it be a defence that he acted upon the best professional advice that could be obtained, on legal and military points, if his conduct has been faulty in point of law. *Id.*

If, on a riot taking place, a magistrate neither reads the proclamation from the Riot Act, nor re-

strains nor apprehends the rioters, nor gives any order to fire on them, nor makes any use of a military force under his command, this is *prima facie* evidence of a criminal neglect of duty in him; and it is no answer to the charge for him to say that he was afraid, unless his fear arose from such danger as would affect a firm man; and if, rather than apprehend the rioters, his sole care was for himself, this is also neglect. *Rev. v. Kennett*, 5 C. & P. 282, n.

Not bound to head Constables.]—In suppressing a riot, he is not bound to head the special constables, or to arrange and marshal them; this is the duty of the chief constables. *Rev. v. Pinney*, 3 B. & Ad. 946; 5 C. & P. 254.

Calling out Special Constables.]—Magistrates are not criminally answerable for not having called out special constables, and compelled them to act pursuant to 1 & 2 Will. 4, c. 41, unless it is proved that information was laid before them, on oath, of a riot having occurred or being expected. *Id.*

Calling out Posse Comitatus.]—A magistrate is not chargeable with neglect of duty for not having called out the posse comitatus in case of a riot, if he has given the king's subjects reasonable and timely warning to come to his assistance. *Id.*

Calling out Soldiers.]—A magistrate who calls upon soldiers to attack a mob and suppress a riot is not bound to go with them; it is enough if he gives them his authority. *Id.*

A magistrate may assemble all the king's subjects to quell a riot, and may call in the soldiers, who are subjects, and may act as such; but this should be done with great caution. *Rev. v. Kennett*, 5 C. & P. 282, n.

Mode of Dispersing Assembly.]—It is not only lawful for magistrates to disperse an unlawful assembly, even when no riot has occurred; but if they do not do so, and are guilty of criminal negligence in not putting down any unlawful assembly, they are liable to be prosecuted for a breach of their duty. *Reg. v. Neale*, 9 C. & P. 431.

The mode of dispersing an unlawful assembly may be very different according to the circumstances attending it in each particular case; and an unlawful assembly may be so far verging towards a riot that it may be the bounden duty of the magistrates to take immediate steps to disperse the assembly; and there may be cases where the magistrates will be bound to use force to disperse an unlawful assembly. *Id.*

At the time of a riot, a magistrate may repel force by force, before the reading of the proclamation from the Riot Act. *Rev. v. Kennett*, 5 C. & P. 282, n.

A magistrate is not justified in forcibly dispersing a meeting upon the ground merely that he believes, and has reasonable and probable grounds for believing, that the meeting was held with an unlawful intent, unless the meeting be in itself unlawful; and a plea justifying an assault, upon the ground that it was committed by a magistrate in the dispersion of a meeting, must either allege as a fact that the meeting was unlawful, or must state facts from which its un-

lawfulness can be inferred. *O'Kelly v. Hurvey*, 10 L. R., Ir. 285.

In case of a riot all magistrates, constables and even private individuals, are justified in dispersing the offenders; and if they cannot otherwise succeed in doing so, they may use force, *Reg. v. Furseley*, 6 C. & P. 81.

3. AIDING AND ASSISTING THE CONSTABULARY.

Refusing to Assist.]—To support an indictment against a person for refusing to aid and assist a constable in the execution of his duty in quelling a riot, it is necessary to prove—first, that the constable saw a breach of the peace committed; secondly, that there was a reasonable necessity for calling on the defendant for his assistance; and thirdly, that when duly called upon to assist the constable, the defendant, without any physical impossibility, or lawful excuse, refused to do so; and in such a case it is no ground of defence that from the number of rioters the single aid of the defendant would not have been of any use. *Reg. v. Brown*, Car. & M. 314.

Extent of Protection.]—A person charged to aid a constable, and who does so, is protected *eundo, morando et redeundo*. *Reg. v. Phelps*, Car. & M. 180.

4. INDICTMENT.

Form of.]—If an indictment on 1 Geo. 1, stat. 2, c. 5, s. 1, for remaining assembled one hour after proclamation, in setting out the proclamation omits the words "of the reign of," which were contained in the proclamation read by the magistrate—this is a variance (but amendable under 14 & 15 Vict. c. 100, s. 24). *Re v. Woolcock*, 5 C. & P. 516.

Twelve persons were indicted for a riot and assaulting J. W. The indictment did not conclude in *terrorem populi*. Several of the defendants had been convicted, and, at an ensuing assize, at which the remaining defendants were tried, there was evidence that they had joined in the riot, but there was no proof of any assault, except the words "po. se," and "guilty," written on the indictment, over the names of the convicted defendants:—Held, that this was no proof of an assault as against the present defendants, and that they could not be convicted of the riot only, as the indictment did not conclude in *terrorem populi*. *Re v. Hughes*, 4 C. & P. 373. *But see* 14 & 15 Vict. c. 100, s. 24.

If persons are charged with a riot, and cutting down fences, and the indictment does not conclude in *terrorem populi*, they cannot on that indictment be convicted of a riot, but may be convicted of an unlawful assembly. *Re v. Cor*, 4 C. & P. 538.

An indictment on 1 Geo. 1, stat. 2, c. 5, s. 1, for remaining assembled one hour after proclamation made, need not charge the original riot to have been in *terrorem populi*. *Re v. James*, 5 C. & P. 153.

Two Counts—Finding of Grand Jury.]—An indictment containing two counts, one for a riot, and the other for an assault, found by the grand jury, a true bill as to the assault and *ignoramus*

as to the riot, is good. *Re v. Fieldhouse*, Cowp. 325.

Abatement by Death.]—If four are indicted for a riot, and two die before trial, and two are found guilty, judgment will not be arrested. *Re v. Scott*, 3 Burr. 1262; 1 W. Bl. 350.

5. EVIDENCE.

Presence.]—On an indictment for a riot, the parties charged must be proved to have been present before the fact of the riot can be given in evidence. *Nicholson's case*, 1 Lewin, C. C. 300.

But it has since been held that the prosecutor is entitled to prove the acts of any of the rioters before he connects the others with the riot. *Reg. v. Cooper*, 1 Russ. C. & M. 405.

6. INJURIES TO PROPERTY BY RIOTERS.

(*See L. C. J. Tindal's Charge on the Bristol Special Commission in 1832*, 5 C. & P. 265, n.)

Statute.]—By 24 & 25 Vict. c. 97, s. 11, if any persons, riotously and tumultuously assembled together to the disturbance of the public peace, shall unlawfully and with force demolish, or pull down or destroy, or begin to demolish, pull down or destroy, any church, chapel, meeting-house or other place of divine worship, or any house, stable, coachhouse, outhouse, warehouse, office, shop, mill, malthouse, hop-oast, barn, granary, shed, hovel or fold, or any building or erection used in farming land, or in carrying on any trade or manufacture or any branch thereof, or any building, other than such as are in this section before mentioned, belonging to the Queen, or to any county, riding, division, city, borough, poor-law union, parish or place, or belonging to any university, or college or hall of any university, or to any inn of court, or devoted or dedicated to public use or ornament, or erected or maintained by public subscription or contribution, or any machinery whether fixed or movable, prepared for or employed in any manufacture or in any branch thereof, or any steam-engine or other engine for sinking, working, ventilating or draining any mine, or any stail, building or erection used in conducting the business of any mine, or any bridge, waggon-way or trunk for conveying minerals from any mine, every such offender shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (Former enactment, 7 & 8 Geo. 4, c. 30, s. 8.)

By s. 12, if any persons, riotously and tumultuously assembled together to the disturbance of the public peace, shall unlawfully and with force injure or damage any such church, chapel, meeting-house, place of divine worship, house, stable, coachhouse, outhouse, warehouse, office, shop, mill, malthouse, hop-oast, barn, granary, shed, hovel, fold, building, erection, machinery, engine, stail, bridge, waggon-way or trunk, as is in the last preceding section mentioned, every such offender shall be guilty of a misdemeanor,

and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour: provided, that if, upon the trial of any person for any felony in the last preceding section mentioned, the jury shall not be satisfied that such person is guilty thereof, but shall be satisfied that he is guilty of any offence in this section mentioned, then the jury may find him guilty thereof, and he may be punished accordingly.

Beginning to Demolish House—What is.]—

It is not a beginning to demolish a house within 7 & 8 Geo. 4, c. 30, s. 8, unless the jury is satisfied that the ultimate object of the rioters was to demolish the house, and that, if they had carried their intention into full effect, they would, in point of fact, have demolished it. *Reg. v. Thomas*, 4 C. & P. 237.

An indictment for feloniously beginning to demolish a house, cannot be supported unless the persons committing the outrage had an intention of destroying the house; and, therefore, where considerable damage was done to a house by a mob, who did this with an intention of seizing a person who had taken refuge in the house:—Held, to be not within the statute. *Reg. v. Price*, 5 C. & P. 510.

Every man has a right to work for the best price he can get, but if others choose to work for less than the usual prices, the law will not permit that violence should be committed towards them, or towards those by whom they are employed, or those with whom they are connected. Where a party of coal-whippers, having a feeling of ill-will towards a coal-lumper, who paid less than the usual wages, created a mob, and riotously went to the house where he kept his payable, and cried out that they would murder him, and began to throw stones, and broke windows, and partitions, and part of a wall, and continued after his escape throwing stones at the house, till they were compelled to desist by the threats of the police:—Held, that they might be convicted of beginning to demolish under 7 & 8 Geo. 4, c. 30, s. 8, though their principal object was to injure the lumper; provided it was also their object to demolish the house, either on account of its being used by him or by his men, and though they had not any ill-will against the owner of the house personally. *Reg. v. Batt*, 6 C. & P. 329.

A. and others were indicted for feloniously demolishing the house of B. It was proved that A. and a mob of persons assembled at H.; A. there addressed the mob in violent language, and led them in a direction towards a police-office about a mile from H., some of the mob from time to time leaving, and others joining. At the police-office the mob broke the windows, and then went and attacked the house of B., and set it on fire, A. not being present at the attack on the house or at the fire:—Held, that on this state of facts A. ought not to be convicted of the demolition, as it did not sufficiently appear what the original design of the mob at H. was, nor whether any of the mob, who were at H., were the persons who demolished B.'s house. *Reg. v. Howell*, 9 C. & P. 437.

If rioters attack a house, and have begun to demolish it, but leave off of their own accord,

after having gone a certain length, and before the act of demolition is completed, this is evidence from which a jury might infer that they did not intend to demolish the house; but if the mob was prevented from going on by the interference of the police, or any other force, that would be evidence to show that they were compelled to desist from that which they had designed, and it would be for the jury to infer that they had begun to demolish within 7 & 8 Geo. 4, c. 30, s. 8. *Ib.*

Destroying movable shop-shutters is not a beginning to demolish within that statute, as they are not part of the freehold. *Ib.*

If a part of the object of rioters is to demolish a house, it makes no difference that they also acted with another object such as to injure a person who had taken refuge there. *Ib.*

On an indictment under 7 & 8 Geo. 4, c. 30, s. 8, for riotously beginning to demolish and demolishing a dwelling-house, total demolition is not necessary, though the parties were not interrupted. If the house is destroyed as a dwelling-house, it is enough. *Reg. v. Phillips*, 2 M. C. C. 252; *S. C.*, nom. *Reg. v. Langford*, Car. & M. 602.

Four men, members of, and connected with the family of, the owner of the cottage, with great violence, and to his great terror, drove him from it, and pulled it down all but the chimney:—Held, sufficient to satisfy the statute, though no other persons were within reach of the alarm; they having no bona fide claim of right, but intending to injure the owner. *Ib.*

If persons riotously assemble and demolish a house, really believing that it is the property of one of them, and act bona fide in the assertion of a supposed right, this will not be a felonious demolition of the house within 7 & 8 Geo. 4, c. 30, s. 8, even though there was a riot. *Ib.*

Demolition by Fire.—If rioters destroy a house by fire, this is a felonious demolition of it within 7 & 8 Geo. 4, c. 30, s. 8, and the person guilty of such an offence may be convicted on an indictment founded on that enactment, and need not be indicted for arson. *Reg. v. Harris*, Car. & M. 661. *S. P.*, *Reg. v. Christian*, 12 L. J., M. C. 26.

If rioters destroy a house by fire, that is as much a demolition as if any other mode of destruction were used. *Reg. v. Howell*, 9 C. & P. 437.

Riotously—What is.]—The 7 & 8 Geo. 4, c. 30, s. 8, not having given any definition of what shall be a riot within the meaning of that enactment, the common-law definition of a riot must be resorted to, and in such a case, if any one of her Majesty's subjects is terrified, this is a sufficient terror and alarm to substantiate that part of the charge of riot. *Reg. v. Phillips*, 2 M. C. C. 252; *S. C.*, nom. *Reg. v. Langford*, Car. & M. 602.

Presence not Necessary.]—If a house is demolished by rioters by means of fire, one of the rioters, who is present while the fire is burning, may be convicted for the felonious demolition under 7 & 8 Geo. 4, c. 30, s. 8, although he is not proved to have been present when the house was originally set on fire. *Reg. v. Simpson*, Car. & M. 669.

Question for Jury.—If, in a case of feloniously demolishing a house by rioters, it appears that some of the prisoners set fire to the house itself, and that others carried furniture out of the house and burnt it in a fire made on a gravel-walk on the outside of the house, it will be for the jury to say whether the latter were not encouraging and taking part in a general design of destroying the house and furniture; and if so, the jury ought to convict them. *Reg. v. Harris*, Car. & M. 661.

Depositions — Application of Prisoner for Copy.—A prisoner had been committed on a charge of high treason, and afterwards the grand jury returned a true bill against him, with others, for feloniously demolishing a house, under 7 & 8 Geo. 4, c. 30, s. 8. He pleaded to that indictment, and wished to be tried after the other prisoners, who were indicted with him for feloniously demolishing the house, on the ground that he had had no copy of any depositions as to that charge. But this was not allowed, as the prosecution might have been commenced without going before any magistrate, and then there would have been no depositions at all. *Reg. v. Simpson*, Car. & M. 669.

XXXVI. ROBBERY.

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1. THE OFFENCE.

Statute.—By 24 & 25 Vict. c. 96, s. 40, *whosoever shall rob any person, or shall steal any chattel, money, or valuable security from the person of another, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years, and not less than five years* (27 & 28 Vict. c. 47), *or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.* (Former provision, 7 Will. 4 & 1 Vict. c. 87, s. 5.)

Taking—What is.—If a robber takes a purse of money from a person and restores it to him immediately, saying, "If you value your purse take it back and give me the contents," but is apprehended before the money is delivered to him, yet the crime is completed. *Reg. v. Peat*, 1 Leach, C. C. 228; 2 East, P. C. 557.

Carrying away—What is.—To remove an ear-ring from the curls of a lady's hair, where it had accidentally been fixed, is a sufficient carrying away. *Reg. v. Lapiere*, 1 Leach, C. C. 320; 2 East, P. C. 557, 708.

Bodily Fear—No Threats.—Taking money from a woman at the time of an attempt to commit a rape amounts to robbery, although there was no demand of money made by the

prisoner, and it was clearly his original intent only to commit a rape. *Reg. v. Blackham*, 2 East, P. C. 711.

Where money was given to one of the mob during the riots in London, in 1780, upon knocking at the prosecutor's door in a menacing manner:—Held, that it was robbery. *Reg. v. Tiplin*, 2 East, P. C. 712.

In Case of Threats.—Where the prisoners threatened to bring a mob from Birmingham (then in a state of riot and disturbance), and burn the prosecutor's house if he did not give them money, and he did so under fear of that threat:—Held, a robbery. *Reg. v. Astley*, 2 East, P. C. 729; *Reg. v. Brown*, 2 East, P. C. 731.

So it was held in the case of a threat to tear down corn, and level the house. *Reg. v. Simons*, 2 East, P. C. 731.

If a person by force or threats compels another to give him goods, and by way of colour obliges him to take, or if he offers, less than the value, it is robbery. *Reg. v. Simons*, 2 East, P. C. 712; *S. P.*, *Reg. v. Spencer*, 2 East, P. C. 712.

Threat of Legal Imprisonment.—Where persons under pretence of an auction got a woman into a house, and compelled her, by threats of carrying her before a magistrate and to prison for not paying for a lot pretended to have been bid for by her, to pay them one shilling through fear of prison, and for the purpose of obtaining her liberation, but without any fear of any other personal violence:—Held, not robbery, but only duress. *Reg. v. Wood*, 2 East, P. C. 732. See now 24 & 25 Vict. c. 96, s. 45.

To obtain money by a threat to send for a constable, and take the party before a magistrate, and thence to prison, is not robbery; for the threat of legal imprisonment ought not so to alarm any mind as to induce the person to part with his property. *Reg. v. Knewland*, 2 Leach, C. C. 721; 2 East, P. C. 732.

Force—What is sufficient to constitute Robbery.—Suddenly snatching a bundle from the hands of a boy as the prisoner ran past him, is only larceny, as there was not a sufficient degree of force and terror to constitute robbery. *Reg. v. Macaulay*, 1 Leach, C. C. 287; *S. P.*, *Reg. v. Robins*, 1 Leach, C. C. 290, n.

But snatching an article from a man will constitute robbery, if it is so attached to his person or clothes as to afford resistance. *Reg. v. Mason*, R. & R. C. C. 419.

To force an ear-ring from the ear of a lady, with a felonious intent to steal it, is a sufficient degree of violence to constitute robbery. *Reg. v. Lapiere*, 1 Leach, C. C. 320; 2 East, P. C. 557, 708.

To snatch a diamond pin from the head-dress of a lady, with such force as to remove it with part of the hair from the place in which it was fixed, is a sufficient violence to constitute robbery. *Reg. v. Moore*, 1 Leach, C. C. 335.

Snatching property from the hand of another is not sufficient force to constitute highway robbery. *Reg. v. Baker*, 1 Leach, C. C. 290; 2 East, P. C. 702.

To constitute the crime of highway robbery, the force used must be force with intent to overpower the party, and prevent his resistance; and if the force used is not with that intent, but only to get

possession of the property of the party attacked, it is not highway robbery. *Reg. v. Gnosil*, 1 C. & P. 504.

A. asked B. what o'clock it was, and B. took out his watch to tell him, holding his watch loosely in both his hands. A. caught hold of the ribbon and key attached to the watch and snatched it from B., and made off with it:—Held, no robbery, but a stealing from the person. *Reg. v. Hughes*, 2 C. & K. 214.

Excessive Force by Officers.]—If a bailiff handcuffs a prisoner, under pretence of carrying him to prison with greater safety, and by means of this violence extorts money, he is guilty of robbery. *Reg. v. Gascoigne*, 1 Leach, C. C. 280; 2 East, P. C. 709.

Threat to Charge with Unnatural Crime.]—If the property is not taken by violence, nor parted with through fear, it is no robbery; though there was sufficient legal and reasonable ground for fear, as upon a threat to charge one with an unnatural crime. *Reg. v. Reane*, 2 East, P. C. 734; 2 Leach, C. C. 616.

The crime of robbery may be committed by obtaining money from a man, by threatening to charge him with having been guilty of sodomitical practices. *Reg. v. Jones*, 1 Leach, C. C. 139.

To obtain money from a person against his will, by threatening to carry him before a magistrate, and to accuse him of unnatural practices, amounts to robbery, though no actual or personal violence is used. *Reg. v. Donnelly*, 1 Leach, C. C. 193; 2 East, P. C. 713, 783.

It is equally a robbery to extort money from a person, by threatening to accuse him of an unnatural crime, whether the party so threatened has been guilty of such crime or not. *Reg. v. Gardner*, 1 C. & P. 479.

If a man obtains property from another by accusing him of having been guilty of an unnatural crime, it will amount to robbery, although the party was under no apprehension of personal danger, and felt no other fear than that of losing his character. *Reg. v. Hickman*, 1 Leach, C. C. 278; 2 East, P. C. 728.

Semble, it is still robbery to extort money by threatening a charge of sodomy. *Reg. v. Stranger*, 2 M. C. C. 261.

Obtaining money by threatening to charge a man with an unnatural crime, and carry him before a magistrate, is robbery, if there is any constraint upon his person. *Reg. v. Cannon*, R. & R. C. C. 146.

Threat must be immediately before Thing Taken.]—To constitute robbery by taking money from another upon a threat of charging him with an unnatural crime, the money must be taken immediately upon the threat made, and not after the parties have separated, and there has been time for the prosecutor to deliberate and procure assistance. *Reg. v. Jackson*, 1 East, P. C. Ad. xxi.; 1 Leach, C. C. 193, n.; 2 Leach, C. C. 618, n.

Threat to Accuse Hushand of Indecent Assault.]—Obtaining money from a woman by threatening to accuse her husband of an indecent assault is not robbery. *Reg. v. Edwards*, 5 C. & P. 518; S. C., nom. *Reg. v. Edward*, 1 M. & Rob. 257.

Fear of Losing Character or Place.]—Where

money was obtained by calling a man a sodomite and threatening him, but the money was parted with by the prosecutor, not so much from fear of losing his character as from fear of losing his place:—Held, that it was sufficient to constitute a robbery. *Reg. v. Elmstead*, 2 Russ. C. & M. 128.

The parting with money or goods, through fear of loss of character and service, upon a charge of sodomitical practices, is sufficient to constitute robbery, although the party has no fear of being taken into custody, nor any dread of punishment. *Reg. v. Egerton*, R. & R. C. C. 375.

Demand of Property bonâ fide Made.]—A. had set wires in which game was caught; B., a gamekeeper, found them and took them, with the game caught in them, for the use of the lord of the manor: A. demanded them with menaces, and B. gave them up. The jury found that A. acted under a bonâ fide impression that the wires and game were his property:—Held, that it was no robbery. *Reg. v. Hall*, 3 C. & P. 409.

Taking out of Prosecutor's Possession.]—A. and B. were walking together, B. carrying A.'s bundle, when C. and D. came up and assaulted A.: B. threw down the bundle, and ran to the assistance of A., when C. took it up and made off with it. C. and D. were indicted for robbery, A. being the prosecutor:—Held, that they could not be convicted of the robbery, but only of simple larceny, as the thing stolen was not in the personal custody of A. *Reg. v. Fallows*, 5 C. & P. 508. Sed quære. See *Reg. v. Thompson*, L. & C. 225; 32 L. J., M. C. 53.

What Property the subject of Robbery.]—A. was attacked by robbers, who, after using very great violence towards him, took from him a piece of paper, on which was written a memorandum respecting some money that a person owed him:—Held, robbery. *Reg. v. Bingley*, 5 C. & P. 602.

Parties—Common Intent.]—If a gang of poachers attack a gamekeeper and leave him senseless on the ground, and one of them returns and steals his money:—Held, that one only can be convicted of the robbery, as it was not in pursuance of any common intent. *Reg. v. Hawkins*, 3 C. & P. 392.

Property parted with so as to Prosecute.]—Parting with property upon the charge of an unnatural crime will not make the taking a robbery, if it is parted with, not from the fear of loss of character, but for the purpose of prosecuting. *Reg. v. Fuller*, R. & R. C. C. 408.

Force must be Used with Intent to Rob.]—In order to constitute the offence of robbery, not only force must be employed by the party charged therewith, but it is necessary to shew that that force was used with the intent to accomplish the robbery. *Reg. v. Edwards*, 1 Cox, C. C. 32.

When it appeared that a wound had been accidentally inflicted on the hand of the prosecutrix:—Held, that an indictment for robbery was not sustainable. *Id.*

A creditor having violently assaulted his debtor, and so forced him to give him a cheque in part payment, and having then again assaulted him, in order to force him to give him money in payment of the debt:—Held, that as there was

no felonious intent, he could not properly be convicted of robbery. *Reg. v. Hemmings*, 4 F. & F. 50.

2. GAROTTING.

Statute.—By 24 & 25 Vict. c. 100, s. 21, *who-soever shall, by any means whatsoever, attempt to choke, suffocate or strangle any other person, or shall, by any means calculated to choke, suffocate or strangle, attempt to render any other person insensible, unconscious or incapable of resistance, with intent in any of such cases thereby to enable himself or any other person to commit, or with intent in any of such cases thereby to assist any other person in committing, any indictable offence, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour.*

3. INDICTMENT.

Offensive Weapon.—An indictment for a highway robbery must state that the assault was feloniously made with an offensive weapon. *Reg. v. Pelfryman*, 2 Leach, C. C. 563; 2 East, P. C. 783.

Violently.—An indictment for robbery need not have the word "violently;" but it must appear upon the whole statement that violence was used. *Ree v. Smith*, 2 East, P. C. 784.

Whose Property—Master or Servant.—A servant was sent out by his master to receive money from his master's customers, and having received the money, he was robbed of it on his way home. Semble, that an indictment for this robbery, in which the money was laid to be the property of his master, could not be supported, as the money had never been in the possession of the master. *Reg. v. Rudick*, 8 C. & P. 237.

And when, in such a case, the objection was taken during the trial, the judge directed the jury to be discharged, and a new indictment to be sent to the grand jury, containing a count laying the property in the servant. *Id.*

Prosecutrix Married before Indictment Found.—An indictment for a robbery on an unmarried woman in her maiden name is good, although she marries before the indictment is found. *Ree v. Turner*, 1 Leach, C. C. 536.

Who may be Convicted.—A. and B. were indicted for the offence of robbery. The jury found that A. took the property of the prosecutor from him by violence, and that B. was present during part of the time, and that he was a party, with A., to a design to bring the prosecutor to the place where he was robbed by A., and to obtain property from him on a false charge of an unnatural crime, but that he was not aiding or assisting in, or privy to the taking of, the property from the prosecutor by violence.—Held, that, in order to convict B., the indictment should have been framed on 7 Will. 4 & 1 Vict. c. 87, s. 4; and that he could not, since the passing of the statute, under the circumstances of the case, be convicted on an indictment charg-

ing the offence of robbery. *Reg. v. Taunton*, 9 C. & P. 309; 2 M. C. C. 118.

Where several are indicted for robbery, it is not necessary to aver that they were together, but where one only of the party is indicted, it ought to be averred that he committed the offence "together with others." *Raffety's case*, 2 Lewin, C. C. 271. See *Reg. v. Ramsden*, 1 Cox, C. C. 37.

Robbery from Two Persons at Same Time.—An indictment for robbery, which charges the prisoners with having assaulted G. P. and H. P., and stolen 2s. from G. P. and 1s. from H. P., is correct, if the robbing of G. P. and H. P. was all one act; and, if it were so, the counsel for the prosecution will not be put to elect. *Reg. v. Giddins*, Car. & M. 634.

4. EVIDENCE.

What Admissible.—On an indictment for robbery, the declaration in articulo mortis of the party robbed is not admissible in evidence. *Ree v. Lloyd*, 4 C. & P. 233.

Other Cases.—A. and B., when riding in a gig together, were robbed at the same time, A. of his money, B. of his watch, and violence used towards both. There was an indictment for the robbing of A., and another indictment for the robbing of B.:—Held, that, on the trial of the first indictment, evidence might be given of the fact of the loss of the watch by B., and that it was found on one of the prisoners, but that no evidence ought to be given of any violence offered to B. by the robbers. *Ree v. Rooney*, 7 C. & P. 517.

If persons who had formed part of a mob obtained money from a party by advising him to give money to the mob, and are indicted for this as a robbery, the prosecutor, to shew that this was not bona fide advice, may give evidence of demands of money made by the same mob at other places, before or afterwards in the course of the same day, if any of the prisoners were present on those occasions. *Ree v. Winkworth*, 4 C. & P. 444.

That Property in Prosecutor's Possession.—In a case of robbery from the person, where the property alleged to have been stolen has not been seen or known to be safe immediately before the robbery, if there is any evidence on the subject, it is for the jury to say whether the property really was in a position to be stolen as alleged. *Reg. v. Wilkins*, 10 Cox, C. C. 363.

Sufficiency—Footmarks.—Evidence of footmarks is, per se, insufficient evidence on which to convict of a robbery. *Reg. v. Britton*, 1 F. & F. 354.

5. TRIAL.

Verdict—Powers of Jury.—By 24 & 25 Vict. c. 96, s. 41, *if, upon the trial of any person upon any indictment for robbery, it shall appear to the jury upon the evidence that the defendant did not commit the crime of robbery, but that he did commit an assault with intent to rob, the defendant shall not, by reason thereof, be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that the defendant is guilty of an assault with intent to*

rob; and thereupon such defendant shall be liable to be punished in the same manner as if he had been convicted upon an indictment for feloniously assaulting with intent to rob; and no person so tried as is herein lastly mentioned shall be liable to be afterwards prosecuted for an assault with intent to commit the robbery for which he was so tried. (Former provision, 14 & 15 Vict. c. 100, s. 11.)

Before this Enactment.]—The following decisions took place under 7 Will. 4 & 1 Vict. c. 85, s. 11, which was repealed by 14 & 15 Vict. c. 100, s. 10, and by that section it was enacted, that on the trial of an indictment for robbery, the jury may convict of an assault with intent to rob, and, on conviction, the prisoner is liable to the same punishment as upon an indictment for feloniously assaulting with intent to rob.

—Independent Assault unconnected with Robbery.]—A., B. and C. were indicted for having robbed and beaten D. A. knocked D. down, and it was imputed that B. and C. stole the property from his pockets:—Held, that if B. and C. stole the property, and A. did not participate in the robbery, A. could not be convicted of an assault, as the assault committed by him was an independent assault unconnected with the robbery; but that, if the jury thought that D. was not robbed by any of the prisoners, but had been assaulted by all of them, they might find all guilty of the assault. *Reg. v. Barnett*, 2 C. & K. 594; 3 Cox, C. C. 432.

—When Sustainable.]—An indictment for robbery charged that A. and B. together assaulted C., and robbed him of his watch. At the trial C. did not appear, and there was no evidence of the felony, but a witness saw C. on the ground on the night in question, and several persons round him abusing him, and this witness saw A. strike C. The jury convicted A. of an assault, but said that they were not satisfied that A. had any intent to rob C.:—Held, that the conviction was right. *Reg. v. Birch*, 2 C. & K. 193; 1 Den. C. C. 185.

The prisoners were indicted for robbery; the jury acquitted them of the robbery, but found that the prisoners were guilty of assaulting and beating the prosecutor with intent to rob him:—Held, that the jury were not justified in finding this verdict, and that the judgment must be arrested, as the assaults contemplated by 7 Will. 4 & 1 Vict. c. 85, s. 11, were misdemeanors, and as the jury had found the prisoners guilty of a felony, which was not in the indictment. *Reg. v. Reid*, T. & M. 431; 2 Den. C. C. 88; 4 Cox, C. C. 104; 20 L. J., M. C. 67; 15 Jur. 181.

Burglariously breaking and entering a dwelling-house, with intent to commit a rape, was not a crime which included an assault; and therefore, in an indictment for such a burglary, the prisoner could not be convicted of an assault. *Reg. v. Watkins*, Car. & M. 264; 2 M. C. C. 217. *S. P.* *Reg. v. Crumpton*, Car. & M. 597.

If on an indictment for a robbery with violence the robbery was not proved, the prisoner could not be found guilty of the assault only, under 7 Will. 4 & 1 Vict. c. 85, s. 11, unless it appeared that such assault was committed in the progress of something, which, when completed, would be, and with intent to commit, a felony. *Reg. v. Greenwood*, 2 C. & K. 339.

6. ASSAULT WITH INTENT TO ROB—VIOLENCE.

Statute.]—By 24 & 25 Vict. c. 96, s. 42, whosoever shall assault any person, with intent to rob, shall be guilty of felony, and being convicted thereof shall (save and except in the cases where a greater punishment is provided by this act) be liable, at the discretion of the court, to be kept in penal servitude for the term of five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (Former provision, 7 & 8 Geo. 4, c. 29, s. 6; 7 Will. 4 & 1 Vict. c. 87, s. 6.)

By s. 43, whosoever shall, being armed with any offensive weapon or instrument, rob or assault with intent to rob, any person, or shall, together with one or more other person or persons, rob, or assault with intent to rob, any person, or shall rob any person, and at the time of or immediately before or immediately after such robbery, shall wound, beat, strike, or use any other personal violence to any person, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement. (Former provision, 7 Will. 4 & 1 Vict. c. 87, s. 3.)

What may be Stolen.]—A. was decoyed into a house and chained down to a seat, and compelled to write an order for the payment of money and an order for the delivery of deeds. The paper on which he wrote remained in his hand half-an-hour, but he was chained all the time:—Held, that this was not an assault with intent to rob within 7 & 8 Geo. 4, c. 29, s. 6. *Ree v. Edwards*, 6 C. & P. 521.

Assault on Person intended to be Robbed.]—It must be proved that the assault was made on the person intended to be robbed. *Ree v. Thomas*, 1 Leach, C. C. 330; 1 East, P. C. 417. And see *Ree v. Trusty*, 1 East, P. C. 418.

Therefore an assault on a post boy, with intent to rob the traveller, is not sufficient. *Id.*

Demand and Assault.]—There must be a demand of money or other property, as well as an assault, to constitute the offence. *Ree v. Parfait*, 1 Leach, C. C. 19; 1 East, P. C. 416.

What kind of Threats.]—A. and B., on a concerted plan to obtain money from C., threatened to accuse him of an indecent exposure of his person, and A. (B. being present) seized C. by the collar, and A. and C. went to a station-house, and there A. made the threatened charge:—Held, that, on these facts, A. and B. might be convicted of an assault with intent to rob C., although the threats used did not come within the terms of 7 & 8 Geo. 4, c. 29, ss. 7, 9, or of 7 Will. 4 & 1 Vict. c. 87, s. 4. *Reg. v. Stringer*, 1 C. & K. 188; 2 M. C. C. 261.

Bona fide Claim of Right.]—A., at C. fair, came up to B., the prosecutor's father (being a stranger to him), and gave him eleven sovereigns to buy him a horse, and B. put them into his pocket. B. refused to give the eleven sovereigns back, and A. and the prisoner, who was in his

company, assaulted him, but could not get the money from him. On the next day the prisoner asked B. for the eleven sovereigns; and, at L. fair on a subsequent day, the prisoner, having seen the prosecutor receive seven sovereigns, demanded the eleven sovereigns of him, and then knocked him down, and tried to get the seven sovereigns out of his pocket.—Held, that there was such a semblance of a claim of right, that this was not an assault with an intent to rob. *Reg. v. Boden*, 1 C. & K. 395.

Indictment.—An indictment for an assault with intent to rob, which charges that the prisoner in and upon R. B. feloniously did make an assault, "with intent the moneys, goods and chattels of R. B., from the person and against the will of R. B., then and there feloniously and violently to rob, steal, take and carry away, against the form of the statute," is good. *Reg. v. Huxley*, Car. & M. 596.

—**Joinder of Counts.**—A. was indicted in one count for feloniously assaulting the prosecutor with intent to steal his moneys and goods, and in another count for the misdemeanor of attempting to steal the same moneys and goods. He was found guilty on the first count; whereupon his counsel moved in arrest of judgment, on the ground that the indictment was bad, by reason of a misjoinder of counts.—Held, that the objection was unfounded, and that A. was properly convicted. *Reg. v. Ferguson*, Dears. C. C. 427; 24 L. J., M. C. 61; 1 Jur., N. S. 73.

Verdict—Powers of Jury.—An indictment charged that A. B., in and upon C. D., feloniously did make an assault, and him the said C. D. in bodily fear and danger of his life did put, and two pieces of current silver coin, from the person and against the will of the said C. D. feloniously and violently did rob, steal, take and carry away; and that A. B. immediately before, at the time of and immediately after such robbery as aforesaid, did feloniously beat and strike and use other personal violence to said C. D. contra formam statuti. The jury found A. B. guilty of beating and assaulting C. D., with intent to rob him.—Held, that, as the offence of assaulting with intent to rob was not expressly stated in the indictment, the prisoner, at common law, could not be convicted; and, secondly, as an assault with intent to rob was made felony by statute, the jury was not at liberty, under 7 Will. 4 & 1 Vict. c. 85, s. 11, to find the prisoner guilty of that felonious assault. *Reg. v. Reid*, 4 Cox, C. C. 104; 2 Den. C. C. 89; T. & M. 431; 20 L. J., M. C. 67; 15 Jur. 181.

Where prisoners were indicted for robbery under aggravated circumstances, it was competent for the jury, under 14 & 15 Vict. c. 100, s. 11, to find the prisoners guilty of an aggravated assault with intent to rob, the assault following the nature of the robbery charged; and prisoners found guilty of such aggravated assaults were liable to transportation, under 7 Will. 4 & 1 Vict. c. 87, ss. 3, 10. *Reg. v. Mitchell*, 3 C. & K. 181; 2 Den. C. C. 468; 5 Cox, C. C. 541; 21 L. J., M. C. 135; 16 Jur. 506. See also cases ante, col. 615.

7. PUNISHMENT OF WHIPPING.

Statute.—By 26 & 27 Vict. c. 44, s. 1, *where*

any person is convicted of a crime under s. 43 of 24 & 25 Vict. c. 96, or under s. 21 of 24 & 25 Vict. c. 100, the court before whom he is convicted may, in addition to the punishment awarded by the said sections, or any part thereof, direct that the offender, if a male, be once or twice or thrice privately whipped, subject to the following provisions: (1), that in the case of an offender whose age does not exceed sixteen years, the number of strokes at each such whipping do not exceed twenty-five, and the instrument used shall be a birch rod; (2), that in the case of any other male offender, the number of strokes do not exceed fifty at each such whipping; (3), that in each case the court in its sentence shall specify the number of strokes to be inflicted and the instrument to be used: provided, that in no case shall such whipping take place after the expiration of six months from the passing of the sentence; provided also, that every such whipping, to be inflicted on any person sentenced to penal servitude, shall be inflicted on him before he shall be removed to a convict prison, with a view to his undergoing his sentence of penal servitude.

XXXVII. SANITARY LAWS,

See HEALTH—Fisher's "Digest."

XXXVIII. SEDITION.

Indictment.—An indictment for sedition alleged "that the defendant, amongst other words and matter, uttered the words and matter following," and then set out several sentences as though they had been uttered continuously. The evidence shewed that they had not been so uttered, but that the sentences had been selected from different parts of the speech, other matter intervening between them.—Held, that there was no variance, and that if any portions of the speech omitted, varied, or controlled the sense of those parts that were set out, the onus was upon the defendant to shew it. *Reg. v. Croue*, 3 Cox, C. C. 123.

Where an indictment contained counts for sedition, attending a seditious meeting and a riot, the court refused to quash the indictment, or compel the counsel for the prosecution to elect, although the judgment on the last count might be different from that upon the others. *Reg. v. Fussell*, 3 Cox, C. C. 291.

The words set out in an indictment for sedition were these, "if the Queen neglects to recognize the people, then the people must neglect to recognize the Queen." It was proved that the word "forget" was used in both instances, and not "neglect:."—Held, to be a fatal variance as far as that sentence was concerned, and that the passage must be struck out. *Ib.*

—**Pleading to, after Demurrer.**—A prisoner indicted under 11 & 12 Vict. c. 12, may, after demurring to the indictment, if his demurrer is overruled, plead over to the felony. *Reg. v. Duffy*, 4 Cox, C. C. 24. But see *Reg. v. Hendy*, 4 Cox, C. C. 243, and *Reg. v. Faderman*, 4 Cox, C. C. 385.

XXXIX. SEPULTURE—DESECRATION OF.

Removing Dead Bodies for Purpose of Dissection.—Taking up dead bodies, even though for

the purpose of dissection, is an indictable offence. *Reg. v. Lynn*, 2 T. R. 733; 1 Leach, C. C. 497.

Selling the dead body of a person capitally convicted for dissection, where dissection was no part of the sentence, was a misdemeanor at common law; and in order to support an indictment for such offence, it was not necessary that there should be direct evidence that the defendant sold the body for lucre and gain, and for the purpose of being dissected. *Reg. v. Cundick*, D. & R. N. P. C. 13.

Taking Body with Intent to Sell.—It is an indictable offence against decency to take a person's dead body with intent to sell or dispose of it for gain and profit. *Reg. v. Gilles*, R. & R. C. C. 336, n. b. And see *Reg. v. Duffin*, R. & R. C. C. 365.

Master of Workhouse Selling Bodies—No Request by Relations.—A master of a workhouse, after shewing the bodies of deceased paupers in coffins to their relatives, caused the relatives to follow other coffins to the graves, and the appearance of a funeral to be gone through. The relatives had not required that the bodies should be interred without anatomical examination, according to 2 & 3 Will. 4, c. 75, s. 7. The master of the workhouse then sent the bodies to Guy's Hospital for dissection, and received therefor sums of money in proportion to the number of bodies sent. After dissection the bodies were buried. The jury found that the master of the workhouse had caused the appearance of funerals to be gone through, with a view to prevent the relatives requiring the bodies to be interred without anatomical examination:—Held, that an indictment charging the master of the workhouse, in one count, with selling the bodies, in another with taking away the bodies for gain to delay the burial with intent to have them dissected, and in a third with intent to sell and dispose of them, could not be sustained, as the master of the workhouse had lawful possession of the bodies within 2 & 3 Will. 4, c. 75, s. 7, and the relatives had made no request that the bodies should be interred without anatomical examination. *Reg. v. Frist*, 8 Cox, C. C. 18; *Dears. & B. C. C.* 54; 27 L. J., M. C. 64; 4 Jur., N. S. 541.

Removal of Corpse from Burying Ground, whether Consecrated or not.—It is a misdemeanor at common law to remove, without lawful authority, a corpse from a grave in a burying-ground belonging to a congregation of Protestant dissenters, and it is no defence to such a charge that the motive of the person removing the body was pious and laudable. *Reg. v. Sharpe*, *Dears. C. C.* 160; 7 Cox, C. C. 214; 26 L. J., M. C. 47; 3 Jur., N. S. 192.

The defendant was indicted for unlawfully, wilfully, and indecently digging open graves in a burial-ground, and taking and removing parts of the bodies of persons buried therein, and interfering with and offering indignities to the remains of the said bodies. The evidence shewed that the defendant employed persons to excavate for building operations the burial-ground attached to a Nonconformist place of worship, which had been disused as a burial-ground for some time; and the jury found that, in the course of the excavations, bones that

formed parts of human remains, and of the same human skeleton, were dug up, but that they were not disturbed in an improper and indecent manner:—Held, that the defendant was guilty of a misdemeanor at common law. *Reg. v. Jacobson*, 14 Cox, C. C. 522.

XL. SODOMY AND BESTIALITY.

Statute.—By 24 & 25 Vict. c. 100, s. 61, *whosoever shall be convicted of the abominable crime of buggery, committed either with mankind or with any animal, shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than ten years.* (Former provision, 9 Geo. 4, c. 15, s. 15.)

Attempt to Commit.—By s. 62, *whosoever shall attempt to commit the said abominable crime, or shall be guilty of any assault with intent to commit the same, or of any indecent assault upon any male person, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding ten years, and not less than five years* (27 & 28 Vict. c. 47), *or to be imprisoned for any term not exceeding two years, with or without hard labour.*

What is.—By s. 63, *whenever, upon the trial, it may be necessary to prove carnal knowledge, it shall not be necessary to prove the actual emission of seed in order to constitute a carnal knowledge, but the carnal knowledge shall be deemed complete upon proof of penetration only.* (Previous provision, 9 Geo. 4, c. 31, s. 18.)

Proof of injectio seminis, as well as penetration, was essential on an indictment for sodomy. *Reg. v. Duffin*, 1 East, P. C. 437; R. & R. C. C. 365.

But since 9 Geo. 4, c. 31, s. 18, the crime is complete, if the jury is satisfied that penetration took place. *Reg. v. Reekespear*, 1 M. C. C. 342; *Reg. v. Cozins*, 6 C. & P. 351.

To constitute the offence of sodomy, the act must be in that part where sodomy is usually committed; for the act in a child's mouth does not constitute the offence. *Reg. v. Jacobs*, R. & R. C. C. 331.

An unnatural connexion with an animal of the fowl kind was not sodomy, before 9 Geo. 4, c. 31, s. 15, a fowl not coming under the term "beast:" [the words of the 9 Geo. 4, c. 31, s. 15, were "any animal"]; and it was agreed clearly not to be sodomy when the fowl was so small that its private parts would not admit those of a man, and were torn in the attempt. *Reg. v. Mulcreaty*, 1 Russ. C. & M. 938.

Indictment.—An indictment for bestiality, which describes the animal as a certain animal called a bitch, is sufficiently certain, although the females of foxes and some other animals are called bitches, as well as the female of the dog. *Reg. v. Allen*, 1 C. & K. 495.

Indictment against two, charging that they, being persons of wicked and unnatural dispositions, did, in an open and a public place, unlawfully meet together, with the intent of committing with each other, openly, lewdly, and indecently in that public place, divers

nasty, wicked, filthy, lewd, beastly, unnatural, and sodomitical practices, and then and there unlawfully, wickedly, openly, lewdly, and indecently did commit with each other, in the sight and view of divers of the liege subjects, in the said public place there passing, divers such practices as aforesaid, is bad, in arrest of judgment, for want of a real certainty. *Reg. v. Rowed*, 2 G. & D. 518; 3 Q. B. 180; 6 Jur. 396.

Who Guilty of.—Where an adult and a boy of twelve years of age commit an unnatural offence, the adult being the pathic may be convicted. *Reg. v. Allen*, 1 Den. C. C. 364; T. & M. 55; 2 C. & K. 869; 3 Cox, C. C. 270; 18 L. J., M. C. 72; 13 Jur. 108.

Crime committed long before Complaint made.—Where a long period of time, nearly two years, has elapsed from the time of committing the offence of bestiality before complaint is made to the justices, the case will not be permitted to go to the jury. *Reg. v. Robins*, 1 Cox, C. C. 114.

Evidence.—It is not allowable to shew that the prisoner has a general disposition, or a natural inclination to commit the same kind of offence as that charged against him. *Reg. v. Cole*, 1 Russ. C. & M. 939.

A married woman who consents to her husband's committing an unnatural offence with her, is an accomplice in the felony, and, as such, her evidence requires confirmation, although consent or non-consent is quite immaterial to the offence. *Reg. v. Jellyman*, 8 C. & P. 604.

Verdict of Jury.—On an indictment against a prisoner charging him with the capital offence of bestiality, the jury could not find him guilty of an assault under 7 Will. 4 & 1 Vict. c. 85, s. 11; but if they acquitted him of the capital charge he might be detained in custody, and indicted for a misdemeanor, in attempting to commit a felony. *Reg. v. Eaton*, 8 C. & P. 417.

XL. SUICIDES AND SELF-MAIMING.

Attempt to Commit Suicide.—An attempt to commit suicide is a misdemeanor at common law. *Reg. v. Doody*, 6 Cox, C. C. 463.

Effect of Drunkenness.—The question for the jury is, whether the prisoner had a mind capable of contemplating the act charged, and whether he did, in fact, intend to take away his life. *Ib.*

The mere fact of drunkenness is no excuse for the crime; but it is a material fact for the jury to consider, before coming to the conclusion that the prisoner really intended to destroy his life. *Ib.*

Where Triable.—Suicide is not murder within 24 & 25 Vict. c. 100, ss. 11–15, and therefore attempting to commit suicide is a misdemeanor triable at quarter sessions. *Reg. v. Burgess*, L. & C. 258; 9 Cox, C. C. 247; 32 L. J., M. C. 55; 7 L. T. 472; 11 W. R. 96.

Unsatisfactory Verdict.—Indictment for murder. Defence, that the deceased committed suicide. Verdict guilty, the jury adding that

they believed the act was committed without premeditation. The judge refused to receive such a verdict, and directed the jury to say guilty or not guilty. *Reg. v. Maloney*, 9 Cox, C. C. 6.

Maiming.—A party who maims himself, or procures another to do it for him, so that he may be better enabled to beg, or to prevent himself from being pressed for a soldier, is liable to fine or imprisonment at common law. *Reg. v. Wright*, 1 East, P. C. 396.

So is the party by whom it is effected at the other's desire. *Ib.*

XLII. THREATS AND MENACES, OBTAINING MONEY, &c., BY.

1. *Demanding Money, &c., with Menaces.*
2. *Threatening to Accuse of Crime, or Obtaining by Violence*, 626.
3. *Letters Threatening to Burn or Destroy*, 628.
4. *Letters Threatening to Murder*, 629.
5. *Threatening to Sue for Penalties*, 630.
6. *Threatening to Publish Defamatory Matter*, 630.
7. *Indictment*, 631.
8. *Trial and Evidence*, 631.

1. DEMANDING MONEY OR VALUABLES WITH MENACES.

By Letter.—By 24 & 25 Vict. c. 96, s. 44, *whosoever shall send, deliver, or utter, or directly or indirectly cause to be received, knowing the contents thereof, any letter or writing, demanding of any person, with menaces, and without any reasonable or probable cause, any property, chattel, money, valuable security, or other valuable thing, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.* (Former provision, 7 & 8 Geo. 4, c. 29, s. 8.)

In other Cases.—By s. 45, *whosoever shall, with menaces or by force, demand any property, chattel, money, valuable security, or other valuable thing of any person, with intent to steal the same, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for the term of five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.* (Previous provision, 7 Will. 4 & 1 Vict. c. 87, ss. 7, 12.)

Menaces or Threats.—By s. 49, *it shall be immaterial whether the menaces or threats be of violence, injury, or accusation, to be caused or made by the offender, or by any other person.*

Letter demanding Money—Threats.—A letter written to the prosecutors in the following terms: "Gentlemen, You say that B. O. N. will accede to the terms proposed, and send part of the

money to any place that may be named. I must have sufficient means at my disposal, or all will be lost. I am fully assured that 20,000*l.* will not cover the horrid catastrophe, which would not only stop your bank for a time, but perhaps for ever, as the books would be all destroyed. The match, the most dreadful and last resource, has been contemplated by the cracksman or captain of this most horrid gang, which I fervently pray to be relieved from." The letter then, after pointing out a certain pipe, behind which the money was to be deposited, proceeded, "If, therefore, you will send a man you can confide in, and lodge under that pipe 250 sovereigns unseen by mortal eye, I swear by Almighty God, most solemnly, that the evil to which I have alluded shall be averted. Let the money be lodged to-morrow, Saturday morning, by half-past eleven, but not one moment sooner, and all shall be well with you; but if I am at all deceived, in any possible way, all must fall upon yourselves:" was a letter demanding money, with menaces, within 7 & 8 Geo. 4, c. 29, s. 8, although the writer did not hold out any threat that he himself would do any mischief. *Reg. v. Smith*, 1 Cox, C. C. 42; T. & M. 214; 1 Den. C. C. 510; 2 C. & K. 882; 19 L. J., M. C. 80; 14 Jur. 92.

The doctrine that the threat held out must be such as would be likely to intimidate a firm man, and not merely a person of a timid disposition, must be taken to refer to the nature of the threat, and not to the nerves of the party to whom it is addressed. *Id.*

In a threatening letter, the threat must be direct and plain. *Reg. v. Girdwood*, 1 Leach, C. C. 142; 2 East, P. C. 1120.

An anonymous letter stated, that the writer had overheard certain persons agree together to do an injury to the person or property of the prosecutor, to whom the letter was sent; and that if thirty sovereigns were laid in a particular place, the writer would give such information as would frustrate the attempt.—Held, that this was not a threatening letter within 7 & 8 Geo. 4, c. 29, s. 8, although it appeared that the letter was a mere device to defraud the prosecutor of thirty sovereigns. *Reg. v. Pickford*, 4 C. & P. 227.

Upon an indictment for sending a letter demanding money, with menaces, and without reasonable or probable cause, it appeared that the prisoner, who had been in the prosecutor's employ as traveller, had afterwards set up in business for himself, married, and become the father of children. There was no evidence of the prosecutor having indulged in the slightest familiarity with the prisoner's wife, or of the prisoner having at any time any ground to suspect that such had been the case, and the prosecutor denied it; but the prisoner sent to him letters imputing to the prosecutor adultery with his wife, that he was the father of one of his children, stating that many a man would have sent a bullet through him, and that he was to refund 44*l.* The judge left to the jury whether the meaning of the letters was to demand a sum of money, and to menace him with adultery, or to send the child to the prosecutor's house; and whether there was any reasonable or probable cause for the demand of the money, or for any of the charges, on all of which questions they found against the prisoner, and found him guilty:—Held, that the letters implied a threat either of

bodily violence, or to charge the prosecutor with adultery, or to send the child to his house, and that the conviction was right. *Reg. v. Chalmers*, 16 L. T. 363; 15 W. R. 773.

A threatening letter referring, in the terms of it, to such circumstances as were plainly intended to denote who the writer was, and making a demand of a sum of money in controversy between him, and the prosecutor, which the latter had received, and which the former had before insisted should be accounted for to him, was not a threatening letter within 9 Geo. 1, c. 22, or 27 Geo. 2, c. 15, although the writer did not subscribe his name. *Reg. v. Heming*, 2 East, P. C. 1116; 1 Leach, C. C. 445, n.

— Question for Jury and not for Court.—

It is for the jury and not for the court to determine whether or not the letter is a threatening one within the statute, and the judge will not withdraw it from their consideration, unless by no possible construction can it be held to involve a threat. *Reg. v. Carruthers*, 1 Cox, C. C. 138.

— Writer might be Discovered.—

It is no answer to a charge of sending threatening letters, that the contents would lead the party to suspect who wrote the letter, unless it is shewn that the prisoner did not mean to conceal himself. *Reg. v. Wagstaff*, R. & R. C. C. 398.

Letter—What is.—A letter, signed by two initials, as R. R., was a letter without a name subscribed thereto within 9 Geo. 1, c. 22. *Reg. v. Robinson*, 2 Leach, C. C. 749; 2 East, P. C. 1110.

Sending Letter—What Sufficient.—To bring the offence of sending a threatening letter within 27 Geo. 2, c. 15, the letter must have been sent to the person threatened, and it must have been so stated in the indictment. *Reg. v. Paddle*, R. & R. C. C. 484.

But it seems, that sending the letter to A., in order that he may deliver it to B., is a sending to B., if the letter was delivered by A. to B. *Id.*

If a letter threatening to burn the premises of A., but directed to B., is left at a gate on a public highway, with the intention that it should reach as well A. as B., that was a sending to A. within 4 Geo. 4, c. 54, s. 3. *Reg. v. Grimwade*, 1 Cox, C. C. 85; 1 Den. C. C. 30; 1 C. & K. 592.

On an indictment on 27 Geo. 2, c. 15, for sending a threatening letter, the dropping a letter in a man's way, in order that he might pick it up, was a sending of it. *Reg. v. Wagstaff*, R. & R. C. C. 398.

The sending was within this statute, although the party saw the prisoner drop the letter, if the prisoner did not suppose the party knew him, and intended he should not. *Id.*

Demanding Money with Threats or Menaces.]

—Threatening to expose a clergyman who had had criminal intercourse with a woman in a house of ill fame, in his own church and village, to his own bishop, to all the other bishops, and to the Archbishop of Canterbury, and also to publish his shame in the newspapers, is such a threat as a man of ordinary firmness cannot be expected to resist, and therefore falls within the word "menaces" used in the statute. *Reg. v. Miard*, 1 Cox, C. C. 22.

Where a person demanded a shilling from the prosecutor, and, on being refused, became very abusive, and threatened to burn up the prosecutor, and then proceeded to make an attempt to set fire to a stack of his:—Held, that he was liable to be indicted for demanding money by menaces, under 7 Will. 4 & 1 Vict. c. 87, s. 7. *Reg. v. Taylor*, 1 F. & F. 511.

To constitute the offence of demanding money with menaces, under 24 & 25 Vict. c. 96, s. 45, the menace or threat must be of a character to produce in a reasonable man some degree of alarm or bodily fear, and such alarm must be of a nature and extent to unsettle the mind upon which it operates, and take away that free voluntary action which constitutes consent. *Reg. v. Walton*, 9 Cox, C. C. 268; L. & C. 288; 32 L. J., M. C. 79; 9 Jur., N. S. 259; 7 L. T. 754; 11 W. R. 348.

A threat to imprison a man upon a fictitious charge is a menace within 24 & 25 Vict. c. 96, s. 45. *Reg. v. Robertson*, 10 Cox, C. C. 9; L. & C. 483; 34 L. J., M. C. 35; 11 Jur., N. S. 96; 11 L. T. 386; 13 W. R. 101.

A conviction under that section is good, although the money has been actually obtained. *Id.*

A prisoner was convicted for demanding money with menaces, with intent to steal the same. The prosecutor, having spoken to a female in the street, at night, the prisoner, a policeman, came up, and told him he had been talking to a prostitute, and that he must go with him to Bridewell, and that he, the prosecutor, was under a penalty of 1*l.* and costs, for talking to a prostitute in the streets; but if he would give him 5*s.* he might go about his business. The prosecutor thereupon gave him 4*s.* 6*d.*:—Held, that the conviction was right. *Id.*

Without Reasonable and Probable Cause.—The words, "without any reasonable or probable cause," in 7 & 8 Geo. 4, c. 29, s. 8, concerning sending threatening letters, apply to the money demanded, and not to the accusation threatened to be made. *Reg. v. Hamilton*, 1 C. & K. 212.

The words, "without any reasonable and probable cause," in 7 & 8 Geo. 4, c. 29, s. 8, must be taken to apply to the state of the prisoner's mind at the time of making the demand; and the jury must look at all the circumstances for the purpose of deciding whether at that time the prisoner bona fide believed that she or he had reasonable cause. *Reg. v. Mard*, 1 Cox, C. C. 22.

Valuable Security—What is.—Husband and wife were indicted under 24 & 25 Vict. c. 96, s. 48, for having by threats of violence and restraint induced the prosecutor to write and affix his name to the following document:—"London, July 19th, 1875. I hereby agree to pay you 100*l.* on the 27th inst., to prevent any action against me:—Held, that this document was not a promissory note, but was an agreement to pay money upon a valid consideration which could be sued upon, and was therefore a valuable security. *Reg. v. John*, 13 Cox, C. C. 100.

To constitute a valuable security within the statute an instrument need not be negotiable. *Id.*

2. THREATENING TO ACCUSE OF CRIME, OR OBTAINING BY VIOLENCE.

By Letter.—By 24 & 25 Vict. c. 96, s. 46, *whosoever shall send, deliver or utter, or directly or indirectly cause to be received, knowing the contents thereof, any letter or writing accusing or threatening to accuse any other person of any crime punishable by law with death or penal servitude for not less than seven years, or of any assault with intent to commit any rape, or of any attempt or endeavour to commit any rape, or of any infamous crime as hereinafter defined, with a view or intent, in any of such cases, to extort or gain by means of such letter or writing any property, chattel, money, valuable security or other valuable thing from any person, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping;*

And the abominable crime of buggery, committed either with mankind or with beast, and every assault with intent to commit the said abominable crime, and every attempt or endeavour to commit the said abominable crime, and every solicitation, persuasion, promise or threat offered or made to any person whereby to move or induce such person to commit or permit the said abominable crime, shall be deemed to be an infamous crime within the meaning of this act; (Former provisions, 7 & 8 Geo. 4, c. 29, s. 8, and 10 & 11 Vict. c. 66, s. 1.)

In other Cases.—By s. 47, *whosoever shall accuse, or threaten to accuse, either the person to whom such accusation or threat shall be made or any other person, of any of the infamous or other crimes lastly hereinbefore mentioned, with the view or intent, in any of the cases last aforesaid, to extort or gain from such person so accused or threatened to be accused, or from any other person, any property, chattel, money, valuable security, or other valuable thing, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and, if a male under the age of sixteen years, with or without whipping. (Precious provision, 10 & 11 Vict. c. 66, s. 2.)*

Inducing Person by Violence or Threats to Execute Deeds, &c., with Intent to Defraud.]

By s. 48, *whosoever, with intent to defraud or injure any other person, shall, by any unlawful violence to or restraint of, or threat of violence to or restraint of, the person of another, or by accusing or threatening to accuse any person of any treason, felony, or infamous crime as hereinbefore defined, compel or induce any person to execute, make, accept, indorse, alter or destroy, the whole or any part of any valuable security, or to write, impress or affix his name or the name of any other person, or of any company, firm or co-partnership, or the seal of any body corporate, company or society, upon or to any*

paper or parchment, in order that the same may be afterwards made or converted into, or used or dealt with as a valuable security, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

By s. 49, it shall be immaterial whether the menaces or threats hereinbefore mentioned be of violence, injury or accusation, to be caused or made by the offender, or by any other person.

Guilt or Innocence Immaterial.—On the trial of an indictment for threatening to accuse of an infamous crime in order to extort money, the guilt or innocence of the party threatening is quite immaterial. *Reg. v. Cracknell*, 10 Cox, C. C. 408.

Whether the crime of which the prisoner was accused by the prosecutor was actually committed is not material in this, that the prisoner is equally guilty if he intended by such accusation to extort money. *Reg. v. Richards*, 11 Cox, C. C. 43.

But it is material in considering the question whether, under the circumstances of the case, the intention of the prisoner was to extort money, or merely to compound a felony. *Ib.*

Libellous Matter.—On an indictment for threatening to publish certain matter with intent to extort money, it is not necessary that the matter should be libellous. *Reg. v. Coghlan*, 4 F. & F. 316.

Intent may be Implied or Inferred.—An intent to extort money may be implied from the circumstances, and does not require an express demand of money. *Ib.*

But, if it appears that the object is to compel the delivery of accounts of money honestly believed to be due and owing, there is no evidence of the intent. *Ib.*

A prisoner was indicted under 7 & 8 Geo. 4, c. 29, s. 8, in a first count, for feloniously accusing A. of a certain infamous crime, that is to say, of having made to the prisoner a certain solicitation, whereby to move and induce the prisoner to commit with him, the crime of sodomy, with a view to extort and gain money from him; second count, charging the same offence somewhat differently:—Held, that the evidence was not sufficient to prove the intent laid. *Reg. v. Middleditch*, 1 Den. C. C. 92.

Where a prisoner is indicted for feloniously sending a letter, threatening to accuse of an infamous crime, with intent to extort money, both the threat and the intent may be inferred, even against the declaration of the prisoner at the time, and in the absence of express proof, from the letter itself, from his previous and contemporaneous, and even from his subsequent conduct and expressions to third parties. *Reg. v. Menage*, 3 F. & F. 310.

Threat to Accuse.—The threatening to accuse, under 7 & 8 Geo. 4, c. 29, s. 8, need not be a threat to accuse before a judicial tribunal; a threat to charge before any third person is enough. *Reg. v. Robinson*, 2 M. & Rob. 14; 2 Lewin, C. C. 273.

Sending a letter threatening to accuse the prosecutor of having made overtures to the prisoner to commit sodomy with him, did not threaten to charge such an infamous crime as to be within 4 Geo. 4, c. 54, s. 3. *Reg. v. Hickman*, 1 M. C. C. 34.

Where it was proved that a prisoner, to obtain moneys, said to the prosecutor, "If you do not assist me, I will say you took indecent liberties with me some time ago:—"Held, not sufficient to sustain a count which charged that he threatened to accuse the prosecutor of having attempted and endeavoured to commit with him the abominable crime. *Reg. v. Norton*, 8 C. & P. 671.

An indictment on 30 Geo. 2, c. 24, for sending a threatening letter, intended to extort and gain money, could not be supported by shewing a letter threatening to accuse the prosecutor of an unnatural crime, if he did not give up a certain bill drawn by the prisoner, of which the prosecutor was the holder. *Reg. v. Major*, 2 East, P. C. 1118; 2 Leach, C. C. 772.

A person threatening A.'s father that he would accuse A. of having committed an abominable offence upon a mare for the purpose of putting off the mare, and forcing the father, under terror of the threatened charge, to buy and pay for her at the prisoner's price, is guilty of threatening to accuse with intent to extort money, within 24 & 25 Vict. c. 96, s. 47. *Reg. v. Rodman*, 1 L. R., C. C. 12; 35 L. J., M. C. 83; 11 Jur., N. S. 960; 13 L. T. 303; 14 W. R. 56; 10 Cox, C. C. 159.

Question for Jury.—The prisoner was proved to have made the accusation in these words, "I charge this man with indecently assaulting me:—"

Held, that it was a question for the jury—taking into consideration the prisoner's conduct throughout the transaction—whether by those words he did not mean to allege that the prosecutor had solicited him to the commission of an unnatural offence. *Reg. v. Cooper*, 3 Cox, C. C. 547.

Where the charge made by the prisoners was one specifically of an indecent assault:—Held, that it was for the jury to take into their consideration not only the charge itself, but the conduct of the prisoners generally, for the purpose of deciding what was the nature of the accusation they intended to prefer. *Reg. v. Braynell*, 3 Cox, C. C. 402.

3. LETTERS THREATENING TO BURN OR DESTROY.

Statute.—By 24 & 25 Vict. c. 97, s. 50, *whosoever shall send, deliver or utter, or directly or indirectly cause to be received, knowing the contents thereof, any letter or writing threatening to burn or destroy any house, barn or other building, or any rick or stack of grain, hay or straw, or other agricultural produce, or any grain, hay or straw or other agricultural produce, in or under any building, or any ship or vessel, or to kill, maim or wound any cattle, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding ten years and not less than five years (27 & 28 Vict. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a*

male under the age of sixteen years, with or without whipping. (Former provisions 4 Geo. 4, c. 54, s. 3, and 10 & 11 Vict. c. 66, s. 1.)

What Property.]—Sending a letter threatening to burn standing corn, was not an offence within 4 Geo. 4, c. 54, s. 3. *Reg. v. Hill*, 5 Cox, C. C. 233.

Whose House.]—An indictment on 4 Geo. 4, c. 54, s. 3, charging that the prisoner sent a letter to T. L., threatening to burn the house of J. R., was bad—as the threat must be to the owner of the property; and if the letter was sent to T. L. with intent that it should reach J. R., and did reach him, it should have been charged in the indictment as sent to J. R. *Reg. v. Jones*, 2 C. & K. 398; 1 Den. C. C. 218; 1 Cox, C. C. 67.

An indictment for sending a threatening letter stated that one R. had lately built and completed a house; and then charged that the prisoner feloniously sent to one L. a certain letter, threatening to burn the house so built by the said R. Upon objection taken that the indictment ought to have charged a sending to R. :—Held, that the indictment was bad on that ground. *Reg. v. Jones*, 2 Cox, C. C. 434.

A conviction on 27 Geo. 2, c. 15, for sending a letter to the prosecutor, threatening “to set fire to his mill, and likewise to do all the public injury they were able to him, in all his farms and seteres,” was wrong, when the prosecutor had not then any mill to which the threat of burning would apply (having parted with it three years before); and the threat as to the farm, &c., not necessarily implying a burning. *Reg. v. Jepson*, 2 East, P. C. 1115.

Sending a letter to A. threatening to burn a house of which he was owner, but let by him to, and occupied by, a tenant, was not an offence within 4 Geo. 4, c. 54, s. 3. *Reg. v. Burridge*, 2 M. & Rob. 296.

Indictment for sending a threatening letter under 4 Geo. 4, c. 54, s. 3. First count charged G. with sending to R., and threatening to burn R.'s houses. It was proved that R. had only a reversionary interest in these houses. Quære, whether G. could be convicted on that count. *Reg. v. Grimwade*, 1 Den. C. C. 30; 1 C. & K. 592; 1 Cox, C. C. 85.

4. LETTERS THREATENING TO MURDER.

Statute.]—By 24 & 25 Viet. c. 100, s. 16, *whoever shall maliciously send, deliver or utter, or directly or indirectly cause to be received, knowing the contents thereof, any letter or writing threatening to kill or murder any person, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding ten years, and not less than five years (27 & 28 Viet. c. 47), or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.* (Former provisions. 4 Geo. 4, c. 54, s. 3, and 10 & 11 Vict. c. 66, s. 1.)

Indictment.]—A letter signed, “I am your ent-throat,” and stating, that if the person to whom it was sent had his deserts, he would not live the week out; and that the writer would be with him shortly, and if he made light of it, the

writer would make light of him and his, so plainly conveys a threat to kill and murder, as to render it unnecessary to insert either innuendoes or prefatory allegations in the indictment to explain its meaning. *Reg. v. Boucher*, 4 C. & P. 562.

Uttering—What is.]—The intentionally putting a threatening letter in a place where it is likely to be seen and read by the party to whom it is directed, or to be found by some other person, and which is in fact so found and conveyed to the party, was an uttering of the letter within 10 & 11 Vict. c. 66, s. 1. *Reg. v. Jones*, 5 Cox, C. C. 226.

5. THREATENING TO SUE FOR PÉNALTIES.

When Indictment Sustainable.]—Threatening by letter, or otherwise, to put in motion a prosecution by a public officer, to recover penalties for selling Fryer's Balsam without a stamp (which by 42 Geo. 3, c. 36, was prohibited to be vended without a stamped label), for the purpose of obtaining money to stay the prosecution, is not such a threat as a firm and prudent man may not be expected to resist, and therefore is not in itself an indictable offence at common law, although it is alleged that the money was obtained; no reference being made to any statute which prohibits such attempt. *Reg. v. Southerton*, 6 East, 126; 2 Smith, 305.

But it seems that such an offence is indictable upon 18 Eliz. c. 5, s. 4. for regulating common informers, which prohibits the taking of money, without consent of court, under colour of process, or without process, from any person upon pretence of any offence against a penal law. *Id.*

But no indictment for any attempt to commit such a statutable misdemeanor can be sustained as a misdemeanor at common law, without at least bringing the offence intended within, and laying it to be against, the statute. *Id.*

Though if the party so threatened had been alleged to be guilty of the offence imputed within the statute imposing the duty and creating the penalty, such an attempt to compound and stifle a public prosecution for the sake of private lucre, in fraud of the revenue, and against the policy of the statute, which gives the penalty as auxiliary to the revenue, and in furtherance of public justice for example's sake, might also, upon general principles, have been deemed a sufficient ground to sustain the indictment at common law. *Id.*

6. THREATENING TO PUBLISH DEFAMATORY MATTER.

Statute.]—By 6 & 7 Viet. c. 96, s. 3, *if any person shall publish, or threaten to publish, any libel upon any other person, or shall directly or indirectly threaten to print or publish, or shall directly or indirectly propose to abstain from printing or publishing, or shall directly or indirectly offer to prevent the printing or publishing of any matter or thing touching any other person, with intent to extort any money or security for money, or any valuable thing from such or any other person, or with intent to induce any person to confer or procure for any person any appointment or office of profit or trust, every such offender, on being convicted thereof, shall be liable to be imprisoned, with or*

without hard labour, in the common gaol or house of correction for any term not exceeding three years: provided always, that nothing herein contained shall in any manner alter or affect any law now (1843) in force in respect of the sending or delivery of threatening letters or writings.

Evidence.—Counts under this section, charging the defendants with unlawfully offering to prevent the publishing, and with threatening to publish certain matters touching the prosecutor, with intent to extort money, are not supported by evidence, that they attempted to obtain the money by leading the prosecutor to believe that an information would be laid against him by one G., for an offence relating to the post-horse duties, and that they had the means of preventing the proceedings and would prevent it on being paid a sum of money. *Reg. v. Yates*, 6 Cox, C. C. 441.

7. INDICTMENT.

Persons Indictable.—Where a wife wrote a threatening letter, and the husband carried it to the party threatened:—Held, that the husband, though privy to the writing, was not within 9 Geo. 1, c. 22, and 27 Geo. 2, c. 15, nor could the wife alone be convicted unless she wrote and sent it without the husband who delivered it being privy to the contents. *Reg. v. Hammond*, 2 East, P. C. 1119; 1 Leach, C. C. 444.

Form of.—An indictment charging that a prisoner "did feloniously and maliciously, with intent to extort money, charge and accuse A. with having committed the horrible and detestable crime, and feloniously, &c., menace and threaten to prosecute the said A.," was not good under 4 Geo. 4, c. 54, s. 3. *Reg. v. Abgood*, 2 C. & P. 436.

By whom Offence committed.—An indictment on 4 Geo. 4, c. 54, s. 5, for demanding money, must have distinctly shewn by whom it was demanded. *Reg. v. Dunkley*, 1 M. C. C. 90.

Who Threatened.—And an indictment on the same statute by threatening to accuse, &c., must have positively shewn who was threatened. *Ib.*

To whom Security belonged.—On an indictment for threatening to accuse of an infamous crime, with intent to extort a certain security for money, it is not necessary to aver to whom the security belonged. *Reg. v. Tiddeman*, 4 Cox, C. C. 387.

Letter to be Set out.—An indictment for sending a threatening letter must set out the letter. *Reg. v. Lloyd*, 2 East, P. C. 1122; *S. P.*, *Reg. v. Hunter*, 2 Leach, C. C. 631.

8. TRIAL AND EVIDENCE.

Practice—Venue.—The offence of sending a threatening letter may be laid in the county where it is delivered by the post to the prosecutor. *Reg. v. Esser*, 2 East, P. C. 1125; *S. P.*, *Reg. v. Girdwood*, 2 East, P. C. 1120; 1 Leach, C. C. 142.

Inspection of Letter.—If a party is indicted for sending a threatening letter, the

court will, on motion of the prisoner's counsel, as soon as the bill is found, order that the letter be deposited with the officer of the court, that the prisoner's witnesses may inspect it. *Reg. v. Harria*, 6 C. & P. 105.

Evidence—To shew Guilt of Prosecutor.—The prosecutor may be cross-examined with a view to shew that he is really guilty of the offence imputed to him, yet no evidence will be allowed to be given, even in cross-examination, by another witness, to prove that the prosecutor is really guilty. *Reg. v. Crucknell*, 10 Cox, C. C. 408.

Knowledge of Contents of Letter.—The bare delivery of a letter containing threats, though sealed, is evidence of a knowledge of its contents. *Reg. v. Girdwood*, 1 Leach, C. C. 142; 2 East, P. C. 1120.

Proof of several Letters.—Indictment, with three counts for three separate letters. It was proposed to prove the sending of all three:—Held, that evidence of one only was admissible. *Reg. v. Ward*, 10 Cox, C. C. 42.

Of sending Letter.—Affixing a threatening letter on a gate in a public highway, is some evidence to go to the jury of a sending thereof. *Reg. v. Williams*, 1 Cox, C. C. 16.

A prisoner was indicted for sending a threatening letter. The only evidence against him was his own statement, that he should never have written it but for W. G.:—Held, not sufficient. *Reg. v. Howe*, 7 C. & P. 268.

Letter improperly Addressed.—When there is no person in existence of the precise name which the letter bears as its address, it is a question for the jury whether the party into whose hands it falls was really the one for whom it was intended. *Reg. v. Carruthers*, 1 Cox, C. C. 138.

Other Cases to shew Intent.—On the trial of an indictment for threatening to accuse the prosecutor of an infamous crime with intent to extort money, it was proved that the prisoner had gone up to the prosecutor and said to him, "If you do not give me a sovereign I will charge you with an indecent assault:—Held, that inasmuch as, if the jury believed that such language had been used by the prisoner, the intent was manifest, evidence for the prosecution tending to shew that the prisoner had made a similar charge two years before ought not to be admitted. *Reg. v. McDonnell*, 5 Cox, C. C. 153.

On the trial of an indictment for accusing a person of an unnatural crime with intent to extort money—the prisoner being a soldier, and the accusation having been made while he was on duty as sentry—evidence of declarations made by him on a former occasion, on coming off guard, that he had obtained money from a gentleman by threatening to take him to the guard-house and accuse him of an unnatural crime, is admissible. *Reg. v. Cooper*, 3 Cox, C. C. 547.

What Admissible to shew Meaning of Letter.—If the terms of a threatening letter are doubtful as to the exact accusations the prisoner meant to threaten, his declarations subsequently made, on

being asked what he meant to impute, are evidence to explain the meaning of the letter. *Reg. v. Tucker*, Car. C. L. 288; 1 M. C. C. 134.

On the trial of an indictment for threatening to accuse a person of an abominable crime, with intent to extort money, and, by intimidating the party by the threat, in fact obtaining the money, the jury need not confine themselves to the consideration of the expressions used before the money was given, but may, if those expressions are equivocal, connect with them what was afterwards said by the prisoner when he was taken into custody. *Reg. v. Kain*, 8 C. & P. 187.

The prisoner sent to the prosecutor a letter, the language of which was ambiguous:—Held, that the prosecutor might be asked what appeared to him to be the meaning of the letter. *Reg. v. Hendy*, 4 Cox, C. C. 243.

Evidence is admissible to shew that, under the particular circumstances, the words in such a letter have not their ordinary meaning, but the meaning imputed to them upon the record, and therefore the witness may be asked whether he understood the meaning to be that which the record imputed. *Id.*

What Admissible in Case of Accessories.]—

Where an accessory after the fact to a charge of sending threatening letters, is tried in the absence of the principal, the letters so written and sent by the principal are evidence on the trial. *Reg. v. Hansill*, 3 Cox, C. C. 597.

Depositions of Prisoners, when Admissible against them.]—On a charge of threatening to accuse of an infamous crime, it appeared that the prisoner had made a charge before a magistrate against the prosecutor of endeavouring to excite one of them to the commission of an unnatural offence:—Held, that the depositions of the prisoners upon that occasion were admissible against them. *Reg. v. Braynell*, 3 Cox, C. C. 402.

When before the magistrate the prisoners were separately cross-examined as to their being together on the day when the offence was alleged to have been committed, how they had been occupied, &c., and their answers were so contradictory in themselves and so inconsistent with each other, that the magistrate dismissed the charge against the then defendant, and bound him over to prosecute the prisoner for endeavouring to extort money by threats:—Held, that the answers elicited on such cross-examination were not admissible. *Id.*

XLIII. TREASON AND TREASON-FELONY.

1. *Treason.*

a. The Offence.

b. Indictment, Practice, and Evidence, 635.

2. *Treason-Felony*, 639.

I. TREASON.

a. The Offence.

25 *Edw.* 3, st. 5, c. 2 (*the Statute of Treasons*); 1 *M. sess.* 1, c. 1; 36 *Geo.* 3, c. 7 (*made perpetual by 57 Geo.* 3, c. 6); 5 & 6 *Vict.* c. 51; 11 & 12 *Vict.* c. 12.

25 *Edw.* 3, st. 5, c. 2, was extended to Ireland by *Poyning's Act*, 10 *Hen.* 7, c. 10, but 36 *Geo.* 3, c. 7, or 57 *Geo.* 3, c. 6, did not extend to Ireland. See *O'Brien v. Reg.*, 3 Cox, C. C. 360; 2

H. L. Cas. 465; but now extended to Ireland by 11 & 12 *Vict.* c. 12, s. 2.

Overt Acts—Discharging Pistol at Sovereign.]—If in an indictment for treason it is stated as an overt act, that the prisoner discharged at the sovereign a pistol, loaded with powder and a certain bullet, and thereby made a direct attempt upon the life of the sovereign; the jury must be satisfied that the pistol was a loaded pistol: that is, there was something in it beyond the powder and wadding; but it seems it is not necessary for them to be satisfied that it was actually loaded with that which is generally known by the name of a bullet. *Reg. v. Oxford*, 9 C. & P. 525. See 5 & 6 *Vict.* c. 51, s. 2.

— Levying War.]—To constitute the treason of levying war against her Majesty within the realm, there must be an insurrection, there must be force accompanying that insurrection, and it must be for an object of a general nature; and if a person acts as a leader of an armed body, who enters a town, and their object is neither to take the town nor attack the military, but merely to make a demonstration to the magistracy of the strength of their party, either to procure the liberation of certain prisoners convicted of some political offences, or to procure for those prisoners some mitigation of their punishment, this, though an aggravated misdemeanor, is not high treason. *Reg. v. Frost*, 9 C. & P. 129.

— Joining or Continuing with Rebels.]—An apprehension, though ever so well grounded, of having property wasted or destroyed, or of suffering any other mischief not endangering the person, will afford no excuse for joining or continuing with rebels. *Reg. v. McGrouther*, 1 East, P. C. 71.

But it is otherwise if the party joins from fear of death or by compulsion. *Reg. v. Gordon*, 1 East, P. C. 71.

— Piracy.]—An overt act of piracy only may shew a traitorous intent against the king, in treason for adhering to the king's enemies, if the indictment alleges the intent to be to seize the ships of the king as well as his subjects. *Reg. v. Evans*, 1 East, P. C. 80; 2 East, P. C. 798.

— Adhering to King's Enemies.]—Indictment for high treason in compassing the king's death and adhering to his enemies. Overt act, conspiring with others to send intelligence to the enemy concerning the disposition of the king's subjects in case of an invasion. Any intelligence sent to the enemy in order to serve them in shaping their attack or defence, though the purport of it may be to dissuade them from an invasion, is high treason. *Reg. v. Stone*, 6 T. R. 527; 1 East, P. C. 79, 99.

Though the intelligence is intercepted. *Reg. v. Hensley*, 2 *Ld. Ken.* 366; 1 *Burr.* 642.

— To compel Repeal of Law.]—It is high treason to attempt, by intimidation and violence, to compel the repeal of a law. *Reg. v. Gordon (Lord George)*, 2 *Dougl.* 590.

By whom Committed—Foreigner Resident in England.]—It will be treason in a foreigner resident here, or who is himself abroad, if his family resides here, to aid even his own country-

men in acts or purposes of hostility, whether his own sovereign is at enmity or peace with ours, for it is a breach of the local allegiance due from him. *Reg. v. Delamotte*, 1 East, P. C. 53.

b. Indictment, Practice, and Evidence.

35 *Hen.* 8, c. 2; 1 *Edw.* 6, c. 12, s. 22; 5 *§ 6 Edw.* 6, c. 11, s. 12; 1 *§ 2 P.* *§ M.* c. 10, ss. 7 and 8; 7 *§ 8 Will.* 3, c. 3; 7 *Anne*, c. 21, s. 5; 6 *Geo.* 3, c. 53, s. 3; 30 *Geo.* 3, c. 48; 39 *§ 40 Geo.* 3, c. 93; 54 *Geo.* 3, c. 146; 6 *Geo.* 4, c. 50, s. 21; 5 *§ 6 Vict.* c. 51, s. 1.

Indictment.—Semble, that counts charging a party with high treason in "compassing, &c., the maim and wounding" of his majesty, and with "compassing, &c., the wounding" of his majesty, are bad. *Reg. v. Collins*, 5 C. & P. 305.

Copy of Indictment.—An allegation that the prisoner indicted for high treason has not had a true copy of the indictment is not matter for a plea, but only a ground for an application for a postponement of the trial. *Reg. v. Burke*, 10 Cox, C. C. 519.

The copy of the indictment furnished to the prisoner need not contain a copy of the indorsement of the finding of the grand jury in order to satisfy the statute. *Id.*

A person indicted for high treason is entitled under 7 Anne, c. 21, s. 14, to a copy of the indictment ten days before his arraignment. *Reg. v. Gordon* (*Lord George*), 2 Dougl. 591.

List of Witnesses.—A person indicted for high treason is entitled, under 7 Anne, c. 21, s. 14, to a list of the witnesses for the crown ten days before his arraignment. *Reg. v. Gordon* (*Lord George*), 2 Dougl. 591.

On a trial for high treason, it was objected, after the jury had been charged with the prisoner, but before the first witness was examined, that the prisoner had no list of witnesses delivered to him. The indictment was found on the 11th of December; on the 12th of December a copy of it and of the panel of the jurors intended to be returned by the sheriff, were delivered to the prisoner; and on the 17th of December the list of witnesses was delivered to him. The prisoner was arraigned on the 31st of December. The objection to the delivery of the list of witnesses was, that the copy of the indictment and the list of jurors and witnesses should have been all delivered at the same time simul et semel:—Held, that the delivery of the list of witnesses was not a good delivery in point of law, but that the objection to the delivery of the list of witnesses was not made in due time; and that, if the objection had been made in due time, the effect of it would have been a postponement of the trial, in order to give time for a proper delivery of the list. *Reg. v. Frost*, 9 C. & P. 163; 2 M. C. C. 140; 4 Jur. 53.

Description of Witnesses in Lists.—Any objection to the description of the witness in the list of witnesses must be taken on the voir dire, and comes too late after the witness is sworn in chief. *Reg. v. Frost*, 9 C. & P. 183; 2 M. C. C. 140; 4 Jur. 53.

The list may properly describe a party as lately of such a place. *Reg. v. Watson*, 2 Stark. 116.

But if, upon the examination of the witness upon the voir dire, it appears that he has had a different and later place of residence, the description will not be sufficient. *Id.*

A witness was described in the list of witnesses as "S. S., of the parish of S. W., in the borough of N., in the county of M., labourer." N. was a place with 6,000 inhabitants, and formed only a part of the parish of S. W., which was a large parish, extending beyond the borough of N.:—Held, sufficient, and that it was neither a misdescription nor too general. *Reg. v. Frost*, 9 C. & P. 147.

A witness was described in the list of witnesses as "of Cross-y-Cylo, in the parish of L." The witness stated, that he lived near Cross-y-Clog (which means Cross of the Cock), and that there were two public-houses, each so called; and that his house was between them, and sixty yards from each. It was also proved, that there was a cluster of houses at this place, and that a witness had directed invoices to one of them, as Cross-y-Clog:—Held, that the witness was not properly described. *Reg. v. Frost*, 9 C. & P. 150.

A witness was described in the list of witnesses as "M. J., of P., in the parish of St. W., in the county of M., sometimes abiding at the house of his son, J. J., in the parish of B., in the said county." The witness occupied a house at P., in the parish of St. W., in which his wife resided, he going to work with his son, and returning to his house at P. about three days in every two months. The son's house was in the parish of M., and not in the parish of B.:—Held, that if the witness had been described as of P., in the parish of St. W., that would have been sufficient; but that, as the latter part of the description was incorrect, it vitiated the whole. *Reg. v. Frost*, 9 C. & P. 152.

Juries and Challenges.—If a true bill is found against a person for high treason, the judge will, on the application of the counsel for the crown, order the sheriff to furnish the solicitor to the treasury with a list of the persons to be summoned on the jury, that a copy of it may be delivered to the prisoner. *Reg. v. Collins*, 5 C. & P. 305.

A person indicted for high treason is entitled under 7 Anne, c. 21, s. 14, to a list of the jury-men who are to be returned on the panel ten days before his arraignment. *Reg. v. Gordon* (*Lord George*), 2 Dougl. 591.

Where the prisoner's counsel asked that the names of the jurors should be taken from a ballot-box, instead of being called over in the order in which they stood in the panel, which was alphabetical, and this proposition was acquiesced in by the attorney-general, the court allowed the names of the jurors to be taken from a ballot-box; but if the attorney-general had objected, the court would not have granted the application. *Reg. v. Frost*, 9 C. & P. 136.

Amendment of Panels.—The jury panel, in cases of treason, may be amended by correcting mistakes and inserting a description of the professions of the jurors. *Reg. v. Hardy*, 1 East, P. C. 113.

Evidence.—As to evidence of treason, see *Reg. v. Horne Tooke*, 1 East, P. C. 60, 69; 2 Leach, C. C. 823.

— **To prove Conspiracy.**—In a case of high treason or conspiracy, the prosecutor may either prove the conspiracy which renders the acts of the co-conspirators admissible in evidence, or he may prove the acts of the different persons, and thus prove the conspiracy; therefore, in a case of high treason, where it appeared that a party had met, which was joined by the prisoner on the next day, the counsel for the prosecution was allowed to ask what directions one of the party gave on the day of their meeting, as to where they were to go, and for what purpose. *Reg. v. Frost*, 9 C. & P. 149.

In high treason, the overt act of one is the overt act of all; and therefore a common design must, in such cases, precede the proof of individual acts. *Reg. v. Brittain*, 3 Cox, C. C. 77.

— **Onus of Proof.**—The prisoner is not bound of necessity to shew what was the object or meaning of the acts done by him. The offence must be made out by those who make the charge. *Reg. v. Frost*, 9 C. & P. 129.

— **What Admissible.**—A letter sent by one of the conspirators, in pursuance of the common design, with a view of reaching the enemy, is evidence against all engaged in the same conspiracy. *Reg. v. Stone*, 6 T. R. 527; 1 East, P. C. 79, 99.

A paper found in the possession of one of the conspirators, containing intelligence proved to have been collected by the prisoner, which paper was in the handwriting of the prisoner's clerk, is evidence against the prisoner. Aliter, of a paper in the same handwriting not appearing to have any connexion with the prisoner. *Ib.*

An alien was indicted for high treason, in compassing to depose the Queen, and in levying war against the Queen. The material overt acts of compassing to depose the Queen were—1st, conspiring at Dublin, to raise rebellion and levy war within the realm, and 2ndly, levying war within the realm at various places. There was evidence that he was a member of the directing body of a treasonable conspiracy, having for its object the overthrow of the Queen's government, and the establishment of a republic in Ireland. There was also evidence that he had planned an attack upon the castle of Chester, in England, for the purpose of seizing arms there, and conveying them to Ireland, with the view of raising an insurrection there. Evidence was also given that the directing body had, in February, 1867, given orders for a rising in Ireland. On the 23rd February, 1867, he was arrested while attempting to land in Dublin. On the 5th March, 1867, he being in custody, an insurrectionary movement, the result of the commands of the directing body of the conspiracy, broke out in several places in Ireland, and various acts of war were committed:—Held, that those acts of war were receivable against him on the indictment in England. *Reg. v. McCafferty*, 1 Ir. R., C. L. 363; 10 Cox, C. C. 603; 15 W. R. 1022.

— **Number of Witnesses.**—The rule as to the necessity of having two witnesses, in cases of high treason, considered and discussed. *Ib.*

If one overt act is proved by one witness in the county in which the trial is had, which gives the grand jury jurisdiction to inquire, another overt act of the same species of treason, proved by another witness in a different county, will make

two witnesses within 7 & 8 Will. 3, c. 3. *Reg. v. Jellias*, 1 East, P. C. 130.

A conviction of high treason may be upon the evidence of one witness only, in all cases where there is no corruption of blood. *Reg. v. Gahagan*, 1 Leach, C. C. 42; 1 East, P. C. 129.

— **In Reply.**—Evidence had been given for the prosecution, that an armed party had attacked the W. hotel, in which the magistrates and troops were stationed. To shew that the intention of the party was not treasonable, but was merely to procure the release of certain prisoners, a witness was called to prove, that, on the party arriving at the hotel gate, they were asked by a special constable what they wanted, when one of them answered, "Surrender up your prisoners." It was proposed to call evidence in reply, that that was not said at the hotel gate:—Held, that this was properly evidence in reply. *Reg. v. Frost*, 9 C. & P. 159.

— **Trial—Reading over Indictment.**—In charging a jury with a prisoner, it is not necessary to read the whole of the indictment at length to the jury, unless the prisoner or his counsel wish it; it is sufficient for the clerk of the crown to state the subject of it. *Reg. v. Frost*, 9 C. & P. 138.

— **Prisoner Addressing Jury.**—The prisoner has a right to address the jury, in addition to the speeches of his counsel. *Reg. v. Collins*, 5 C. & P. 305.

— **Reply when Evidence in Reply allowed.**—Where the crown gave evidence in reply, the witness in reply was called before the second counsel for the prisoner addressed the jury, and the leading counsel for the prisoner commented on the evidence in reply, also before the second counsel for the prisoner addressed the jury. *Reg. v. Frost*, 9 C. & P. 160.

— **Restoration of Money and Documents.**—The court will not order that money taken from a prisoner charged with high treason be restored to him, unless it is made to appear to the court that the money forms no part of the proof against him. *Reg. v. Frost*, 9 C. & P. 132.

The court will not order that papers taken from his house shall be restored to him; neither will they order that he shall be furnished with copies of them. *Reg. v. Frost*, 9 C. & P. 133.

— **Counsel.**—The only counsel who are recognized by the court, are the two counsel who are assigned by the court, and the court will not take notice of any assistant counsel. *Reg. v. Frost*, 9 C. & P. 135.

Counsel may be assigned for a prisoner charged with high treason, upon an application made to the clerk of the crown, during an adjournment of the commissioners, between the finding of the indictment and the arraignment, or the prisoner will be allowed, if he wishes it, to delay naming his counsel till he is brought up to be tried. *Ib.*

— **Copies of Depositions.**—Prisoners will be allowed copies of the depositions against them, on the terms prescribed by 6 & 7 Will. 4, c. 114, s. 3. *Ib.*

— **Solicitors.**—A person charged with high

treason cannot be allowed by the court before which he is tried to have two attorneys, unless they are partners. *Id.*

During a trial for high treason, which was expected to last several days, the court ordered that the prisoner's attorney should have access to him every day, after the rising of the court, till 10 P.M., and before the sitting of the court, from 7 A.M., although it was stated by the governor of the prison that the prison was not open for any other purpose till half-past 7 A.M., and was shut for the night at 9 P.M. *Id.*

2. TREASON-FELONY.

Indictment.]—The 11 & 12 Vict. c. 12, declares it to be felony to "compass, imagine, invent, devise and intend to deprive and depose our lady the Queen," &c. &c. In support of the charge of this offence under the statute, it is sufficient to allege as overt acts that the defendants conspired, combined, confederated and agreed to commit the offence. *Mulcahy v. Reg. (in error)*, 3 L. R., H. L. 306.

The allegation, in one count, of several different overt acts of felony is not objectionable under 11 & 12 Vict. c. 12. *Id.*

General Verdict.]—Where there are several overt acts charged in a count, and judgment is given on a general verdict of guilty on that count, such judgment will be sustained, though some of the matters alleged as overt acts may be improperly so alleged, provided that the count contains allegations of overt acts that are sufficient and are sufficiently alleged. *Id.*

Evidence to support Conviction.]—Under 11 & 12 Vict. c. 12, s. 3, it is sufficient evidence to support a conviction to shew that the prisoner was a member of a foreign society having for its object the several treasonable objects set out in the several counts of the indictment, and also the existence of a domestic association of similar denomination, and connected with that abroad; and then to prove overt acts done within the venue, in promotion of these objects, by members of the association, and it is not necessary to prove any act of the prisoner himself done in Ireland, or even that he was in Ireland during any part of the period that the associations were shewn to exist either at home or abroad. *Reg. v. Meaney*, 10 Cox, C. C. 506; 1 Ir. R., C. L. 500; 15 W. R. 1082.

Direction to Jury.]—Secret clubs were formed in America, branches of a society called the Fenian Brotherhood, whose object was said to be to procure "the freedom of Ireland by force alone." The prisoners, members of these clubs, came to England provided with funds, their intent being to destroy public buildings by nitro-glycerine and other explosives. One of the prisoners appeared to be the director of the movements of the others, another was detected in manufacturing nitro-glycerine in large quantities at Birmingham, and others were employed in the removal thereof, when manufactured, to London under the director's superintendence. There was evidence that the House of Commons and Scotland-yard office of the detective police were pointed out as places

to be destroyed, as well as that the nitro-glycerine was to be used for destroying other public buildings. By 11 & 12 Vict. c. 12, s. 3 (Treason-Felony Act): "If any person shall, within the United Kingdom or without, compass, imagine, invent, devise, or intend to deprive or depose our most gracious Lady the Queen, her heirs or successors, from the style, honour, or royal name of the Imperial Crown of the United Kingdom or any other of her Majesty's dominions and countries, or to levy war against her Majesty, her heirs or successors, within any part of the United Kingdom, in order by force or constraint to compel her or them to change her or their measures or counsels, or in order to put any force or constraint upon, or in order to intimidate or overawe both Houses or either House of Parliament, or to move or stir any foreigner or stranger with force to invade the United Kingdom or any other of her Majesty's dominions or countries under the obedience of her Majesty, her heirs or successors, and such compassing, imaginations, inventions, devices or intentions, or any of them, shall express, utter, or declare by publishing any printing, or writing, or by open and advised speaking, or by any overt act or deed, every person so offending shall be guilty of felony, and being convicted thereof shall be liable to be transported for life, or not less than seven years, or to be imprisoned for any term not exceeding two years, with or without hard labour." The prisoners were indicted under the above act for compassing, devising, and intending to deprive and depose the Queen from the style, honour, or royal name of the Imperial Crown of the United Kingdom, for levying war against her to compel her to change her counsels, and to intimidate and overawe the Houses of Parliament. The jury were directed (1) that if they thought that one or more of the prisoners did compass, devise, or intend to force the Queen to change her counsels and to overawe the Houses of Parliament by violent measures, directed either against the property of the Queen, the public property, or the lives of the Queen's subjects, and not with the view of repaying any private spite or enmity against any particular subjects of the Queen, it would be a levying of war against the Queen within the meaning of the first count of the indictment; that it was not the less compassing, and intending levying war, because by the progress of science two or three men could do now what could not have been done years ago except by a large number of persons; that the question was, was there proof that the prisoners did what they did with the intention of depriving and deposing the Queen from the style of the Imperial Crown of the United Kingdom, or with the intention of separating Ireland from the Crown of England and establishing an independent republic. (2) That if what the prisoners did was done to compel her Majesty, or her Ministers, by force to change the present constitution, and to alter the relations between England and Ireland, or even to set up a separate parliament in Ireland, it would be within the second count of the indictment. (3) That if what the prisoners did was done for the purpose of intimidating and overawing both or either Houses of Parliament so as to frighten them into doing what otherwise they would not have done, it would be within the third count. *Reg. v. Gallagher*, 15 Cox, C. C. 291.

XLIV. TREASURE TROVE.

Indictment.—An indictment for concealing treasure trove, averring that the Queen is entitled to the treasure, is good without any averment of any inquisition before the coroner, or office found as to the title of the Queen; and a conviction upon such an indictment is good without any evidence as to such matters. *Reg. v. Toole*, 2 Ir. R., C. L. 36; 10 Cox, C. C. 75; 16 W. R. 439.

In an indictment for concealing treasure trove from the crown, it is not necessary to aver that the person concealed it fraudulently. The words "unlawfully, wilfully, and knowingly," are sufficient. *Reg. v. Thomas*, L. & C. 313; 33 L. J., M. C. 22; 9 L. T. 488; 12 W. R. 108.

Evidence.—A., in plunging, found large rings of old gold of considerable value and sold them for brass to B. for 5s. 6d., saying where he found it. B. afterwards found out that they were gold, and offered them to a jeweller for sale as gold. Then B. said he had sold them to C. for brass. Then B. and C. were at a bank together, depositing part of the proceeds for which C. had sold the gold rings:—Held, that there was evidence to support a conviction of both B. and C. for knowingly concealing treasure trove from the crown. *Ib.*

C. PROCEDURE AND PRACTICE.

I. JURISDICTION.

1. *Admiralty Jurisdiction.*
2. *Quarter Sessions*, 643.
3. *Central Criminal Court*, 644.

1. ADMIRALTY JURISDICTION.

Offences by British Subjects on board Ships.]

—By 30 & 31 Vict. c. 124 (the Merchant Shipping Act, 1867), s. 11, *if any British subject commits any crime or offence on board any British ship, or on board any foreign ship to which he does not belong, any court of justice in her Majesty's dominions which would have had cognizance of such crime or offence, if committed on board a British ship within the limits of the ordinary jurisdiction of such court, shall have jurisdiction to hear and determine the case, as if the said crime or offence had been committed as last aforesaid.*

Persons on board British Ships in Rivers.]

Certain bonds or valuable securities were stolen from a British ocean-going merchant ship whilst she was lying afloat, in the ordinary course of her trading, in the river at Rotterdam, in Holland, moored to the quay, and were afterwards wrongfully received in England by the prisoners with a knowledge that they had been thus stolen. The place where the ship lay at the time of the theft was in the open river, sixteen or eighteen miles from the sea, but within the ebb and flow of the tide. There were no bridges between the ship and the sea, and the place where she lay was one where large vessels usually lay. It did not appear who the thief was, or under what circumstances he was on board the ship:—Held, that the prisoners could be properly tried and convicted at the Central Criminal Court in this

country, as the larceny took place within the jurisdiction of the Admiralty of England. *Reg. v. Carr* (No. 2), 10 Q. B. D. 76; 52 L. J., M. C. 12; 47 L. T. 451; 31 W. R. 121; 47 J. P. 38; 15 Cox, C. C. 129; 4 Asp. M. C. 604.

The criminal jurisdiction of the Admiralty of England extends over British ships, not only on the high seas but also in rivers, below the bridges, where the tide ebbs and flows, and where great ships go, though at a spot where the municipal authorities of a foreign country might exercise concurrent jurisdiction, if invoked. *Reg. v. Anderson*, 1 L. R., C. C. 161; 38 L. J., M. C. 12; 19 L. T. 400; 17 W. R. 208; 11 Cox, C. C. 198.

Seemle, there would be jurisdiction at common law if a British ship was on the high seas, or *infra primos pontes*, or in a tidal river where great ships come and go. *Reg. v. Armstrong*, 13 Cox, C. C. 185.

—**Offence not Completed.**—The murder need not be consummated or wholly completed on board such ship to deprive jurisdiction. *Ib.*

Persons on board British Ship on High Seas.]

—An English ship upon the high seas is to be considered as part of the territory of England; and therefore a foreigner, who whilst on board such ship commits an offence against the English laws, is amenable to those laws; and it makes no difference whether he has gone on board voluntarily, or has been taken and detained there against his will. *Reg. v. Lopez*; *Reg. v. Sattler*, Dears. & B. C. C. 525; 7 Cox, C. C. 431; 27 L. J., M. C. 48; 4 Jur., N. S. 98.

A person is found within the jurisdiction of a court of justice, within the meaning of the 18 & 19 Vict. c. 91, s. 21, when he is actually present there, whether he has come within such jurisdiction voluntarily, or has been brought there against his will. *Ib.*

The defendant was convicted on an indictment charging him with assaulting the prosecutors on the high seas, and imprisoning and detaining them. They were Chilean subjects, and had been ordered by the government of Chili to be banished from that country to England. The defendant being master of an English merchant vessel lying in the territorial waters of Chili, near Valparaiso, contracted with the Chilean government to take the prosecutors from Valparaiso to Liverpool; and they were accordingly brought on board his vessel by the officers of the government, and were carried by the defendant to Liverpool under his contract:—Held, that although the conviction could not be supported for the assault and imprisonment in the Chilean waters, it must be sustained for that which was done out of the Chilean territory, and that although the defendant was justified in receiving the prosecutors on board his vessel in Chili, yet that justification ceased when he passed the line of Chilean jurisdiction, and the detention of the prisoners and conveying them to Liverpool was a wrong intentionally planned and executed in pursuance of the contract, amounting to a false imprisonment, and triable by English law. *Reg. v. Lesley*, Bell, C. C. 220; 8 Cox, C. C. 269; 29 L. J., M. C. 97; 6 Jur., N. S. 202; 1 L. T. 452; 8 W. R. 220.

Indictment.—In an indictment preferred at the assizes for a felony committed on the high seas, it is sufficient to allege that the offence was committed on the high seas, without also averring

that the offence was committed within the jurisdiction of the Admiralty. *Reg. v. Jonas*, 2 C. & K. 165; 1 Den. C. C. 101.

British Ship—How Proved.]—On the trial of an indictable offence, committed on board a British ship on the high seas, it is not necessary to prove the register of such ship under the Merchant Shipping Act, 1854, Part 11, or that she belongs to a person qualified to be owner of a British ship according to the terms of that act. *Reg. v. Von Seberg*, 1 L. R., C. C. 264; 39 L. J., M. C. 133; 22 L. T. 523; 18 W. R. 935.

Upon the trial of an indictment against a sailor for wounding the mate on board a ship on the high seas, the master of the ship, the boat-swain, and one of the crew, having stated the ship was a British ship, and was sailing under the British flag:—Held, that the ship was sufficiently proved to be a British ship. *Ib.*

A hulk retaining the general appointments of a ship, registered as a British ship, and hoisting the British ensign, although only used as a floating warehouse, is *prima facie* sufficiently a British ship to be within the 17 & 18 Vict. c. 104, s. 267, and a murder committed thereon is within the jurisdiction of the Admiralty. *Reg. v. Armstrong*, 13 Cox, C. C. 185.

To prove that a ship is a British ship, it is not necessary to produce the register or a copy thereof; it is sufficient to shew orally that she belongs to British owners and carries the British flag. *Reg. v. Allen*, 10 Cox, C. C. 403.

— **Position of Ship.]**—Oral testimony as to the position of a ship at a given time is better evidence than the production of the log-book. *Ib.*

Jurisdiction over Foreign Ship.]—A German vessel carrying the German flag, under the command and immediate direction of a German subject, collided with an English steamer navigating the English channel at a point within two miles and a half from Dover beach, and the collision caused the English ship to sink and the death by drowning of an English subject on board of her. The prisoner was tried and found guilty of manslaughter at the Central Criminal Court:—Held, by the majority of the Court of Criminal Appeal, that the Central Criminal Court had no jurisdiction to try the case. *Reg. v. Keyn, The Franconia*, 2 Ex. D. 63; 13 Cox, C. C. 403; 46 L. J., M. C. 17.

But by the Territorial Waters Jurisdiction Act, 1878 (41 & 42 Vict. c. 73), s. 2, *An offence committed by a person, whether he is or is not a subject of her Majesty, on the open sea, within the territorial waters of her Majesty's dominions, is an offence within the jurisdiction of the admiral, although it may have been committed on board or by means of a foreign ship; and the person who committed such offence may be arrested, tried, and punished accordingly.* By s. 7, "Territorial waters of her Majesty's dominions" means any part of the open sea within one marine league of the coast, measured from low-water mark.

2. QUARTER SESSIONS.

See infra, TRIAL (Venue).

Assizes occurring at same Time.]—The jurisdiction of a recorder of a borough is not determined or suspended by the arrival of the judges

of assize in the same county, and the rule applies equally to the jurisdiction of county justices of the peace; therefore general quarter sessions of the peace for a borough or county may be held concurrently with assizes in the same county, though it would be highly inconvenient to do so. *Smith v. Reg. (in error)*, 3 New Sess. Cas. 564; 13 Q. B. 738; 18 L. J., M. C. 207; 13 Jur. 850.

Where the quarter sessions of a county occur while the judge of assize is proceeding with the trial of prisoners in that county, after the grand jury at the assizes has been discharged, the better course is for the quarter sessions not to proceed with the trial of any prisoners, but to dispose of all their other business, and then to adjourn to a future day. *Anon.*, 9 C. & P. 790.

In Cases of Larceny Abroad and on High Seas.]—*See ante*, LARCENY.

3. CENTRAL CRIMINAL COURT.

Statutes.]—By 44 & 45 Vict. c. 64, *doubts as to the application of s. 24 of the Prisons Act, 1877, to the Central Criminal Court district are removed.*

By 44 & 45 Vict. c. 68, s. 18, *provision is made for fixing the times of holding sessions of the Central Criminal Court.*

Constitution of Court.]—The 4 & 5 Will. 4, c. 4, s. 36, ss. 1, 2, after establishing and constituting the Central Criminal Court, and authorizing the crown to issue commissions of oyer and terminer and gaol delivery, enacts that it shall be lawful for the judges of the court, "or any two or more of them, to inquire of, hear, determine and adjudge" the offences specified:—Held, that this enactment did not require that two judges should sit on the trial of an indictment. That, supposing the attendance of one of the aldermen of the city named in the commission was necessary in addition to the presiding judge, it was no ground of error that the same alderman was not present throughout the trial:—Held, also, that more than one court might sit at the same time. *Letcherson v. Reg. (in error)*, 4 L. R., Q. B. 394; 38 L. J., M. C. 97; 20 L. T. 485; 18 W. R. 251; 10 B. & S. 404.

The judge of the Sheriff's Court of the city of London has jurisdiction to sit as a judge of the Central Criminal Court. *Ib.*

Jurisdiction—Admiralty.]—A foreigner was convicted of manslaughter at the Central Criminal Court, committed on board a British vessel, in the river Garonne, within the boundaries of the French Empire, about thirty-five miles from the sea, and at a spot about 300 yards from the nearest shore, within the ebb and flow of the tide:—Held right, inasmuch as it was a place within the jurisdiction of the Admiralty of England, which that court had jurisdiction to try under 4 & 5 Will. 4, c. 36, s. 22. *Reg. v. Anderson*, 1 L. R., C. C. 161; 38 L. J., M. C. 12; 19 L. T. 400; 17 W. R. 208; 11 Cox, C. C. 198. See also *Reg. v. Keyn*, 2 Ex. D. 63; 46 L. J., M. C. 17; 13 Cox, C. C. 403.

Larceny committed on board an English ship lying in a river in China is within the jurisdiction of the Central Criminal Court. *Rea v. Allen*, 7 C. & P. 664; 1 M. C. C. 494.

— **Larceny.]**—A. was indicted at common

law for simple larceny, in stealing in Middlesex a quantity of lead. The lead was stolen from the roof of the church of Ivcr in Buckinghamshire. The prisoner was indicted at the Central Criminal Court, which has jurisdiction in Middlesex (under 4 & 5 Will. 4, c. 36), but not in Buckinghamshire:—Held, that he could not be convicted there, on the ground that the original taking, not being a larceny, but created by statute a felony, the subsequent possession could not be considered a larceny. *Reg. v. Millar*, 7 C. & P. 665.

— **Libel.**—In a prosecution at the Central Criminal Court for publishing a libel, it is not necessary, for the purpose of giving jurisdiction, that the prosecutor should have entered into recognizance, or that the defendant should have been in custody, or be bound to appear according to 4 & 5 Will. 4, c. 36, s. 13. *Reg. v. Gregory*, 7 Q. B. 274; 14 L. J., M. C. 82; 9 Jur. 593.

— **Forgery.**—A. was indicted at the Central Criminal Court for forgery. He was not shewn either to have committed the forgery, or to have been in custody within the jurisdiction of the court till the moment before the trial, when he surrendered in discharge of his bail:—Held, that he was triable in that court under 11 Geo. 4 & 1 Will. 4, c. 66, s. 21, as being in custody within its jurisdiction. *Reg. v. Smythies*, Den. C. C. 498; 2 C. & K. 878; T. & M. 195; 19 L. J., M. C. 31.

— **Casting away Ship.**—The Central Criminal Court has jurisdiction to try accessories before the fact to the felony of casting away and destroying a ship on the high seas, on an indictment against principal and accessory, though the principal felon is not amenable to justice. *Reg. v. Wallace*, 2 M. C. C. 200; Car. & M. 200.

— **Murder.**—A British subject might be indicted at the Central Criminal Court under 9 Geo. 4, c. 31, s. 7, for the murder of a foreigner out of the Queen's dominions. *Reg. v. Azopardi*, 1 C. & K. 203.

Certiorari—On what Terms.—When, after removal, the defendant is ordered to be tried under the act 19 & 20 Vict. c. 16, at the Central Criminal Court, the Court of Queen's Bench will not make it a condition, under s. 24, that the prosecutor shall furnish the defendant with evidence which, it is suggested, has been obtained by the prosecutor since the taking of the depositions. *Reg. v. Palmer*, 5 El. & Bl. 1024.

— **Grounds for.**—It is not a sufficient ground for the removal of an indictment, under 19 & 20 Vict. c. 16, s. 3, for trial at the Central Criminal Court, that, on the occasion of the first apprehension of the prisoner, some months before the time for trial, articles and paragraphs had appeared in some papers of the particular town in which the trial would take place, of a nature likely to create prejudice against him, and that the case had become matter of conversation amongst certain classes in that town, it not appearing either that those papers had a general circulation in the county, or that the case had become matter of general conversation in the county, as the jurors would be taken from the

county as well as the town. *Reg. v. Ruxton*, 11 W. R. 209.

— **Certificate, Form of.**—The certificate mentioned in 19 & 20 Vict. c. 16, s. 25, may be in the form supplied by the Treasury. *Reg. v. Balcombe*, 25 W. R. 585.

Mandamus.—Mandamus will not lie to the judges and justices of the Central Criminal Court. The recorder of London, upon the trial and conviction of a prisoner charged with larceny, having refused to order (under 24 & 25 Vict. c. 96, s. 100) the person with whom stolen property was pledged to restore it to the prosecutor, the Queen's Bench Division refused to grant a mandamus directed to "the judges and justices of the Central Criminal Court," to compel the recorder to make such order. *Reg. v. Central Criminal Court Judges*, 11 Q. B. D. 479; 52 L. J., M. C. 121.

II. INDICTMENT.

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1. WHEN IT LIES.

In Particular Cases.—See previous sub-heads.

Civil Injury.—An indictment will not lie for a mere civil injury. *Reg. v. Storr*, 3 Burr. 1698. As for pulling off the thatch of a man's dwelling-house. *Reg. v. Atkins*, 3 Burr. 1706. Or for selling, as two chaldrons of coals, a less quantity. *Reg. v. Osborn*, 3 Burr. 1697.

Where express Remedy given.—That which is declared by statute to be a misdemeanor cannot be a felony. *Reg. v. Walford*, 5 Esp. 62.

An indictment lies not upon an act of parliament which creates a new offence, and prescribes a particular remedy. *Reg. v. Wright*, 1 Burr. 543.

When a statute creates a new offence by prohibiting and making unlawful anything which was lawful before, and appoints a specific remedy against such new offence by a particular method of proceeding, that particular method of proceeding must be pursued, and no other. *Reg. v. Lovibond*, 24 L. T. 357; 19 W. R. 753.

Where, therefore, a party had violated the provisions of s. 75 of the 25 & 26 Vict. c. 102, by erecting a building without the consent of the Metropolitan Board of Works and beyond the line of building as provided for by that section, and which section points out the remedy for such violation by summary proceedings before a justice:—Held, that the remedy for such offence was by summary proceedings only, and that an indictment would not lie. *Ib.*

After Statute Repealed.]—A person charged with an offence under an act of parliament which is repealed before the time of trial comes, must not be put upon trial. *Anon.*, 2 Lewin, C. C. 22.

Prohibition and Penalty.]—Where a prohibition and a penalty are contained in the same section of a statute, the remedy must be by proceeding for the penalty; but where the prohibition is in one section, and the penalties are in a subsequent section, an indictment will lie. *Reg. v. Buchanan*, 8 Q. B. 883; 15 L. J., Q. B. 227; 10 Jur. 736.

Acting as an attorney without having been admitted is a misdemeanor indictable under 6 & 7 Vict. c. 73, s. 2, although a person so acting is incapable of maintaining an action for fees, and the so acting is a contempt of court. *Ib.*

Refusing to Marry Persons.]—To sustain an indictment against a clergyman for refusing to marry persons who have obtained a registrar's certificate for that purpose, they must have presented themselves to him to be married at some time when he could legally have married them. *Reg. v. James*, 3 C. & K. 167; T. & M. 300; 2 Den. C. C. 1; 14 Jur. 940.

Against Colonial Governor for Illegal Conduct in Office.]—Form of counts in an indictment against the governor of a colony for the proclamation of martial law, and for illegal acts done while such proclamation was in force. 11 Cox, C. C. App. i.—xi.

Disobeying Orders of Justices.]—An indictment lies for disobeying an order of sessions. *Res v. Robinson*, 2 Burr. 799; 2 Ld. Ken. 513.

The quarter sessions of a county made regulations as to the expenses to be allowed in cases of felony, and by one of them directed that the taxed bill of costs should be annexed to the order for their payment. These regulations were confirmed by a judge, under 7 Geo. 4, c. 64, s. 26. In a case of felony, the clerk of assize made out the items of the costs allowed, and on the other half of the same sheet of paper wrote the order for the payment of their amount. The attorney for the prosecution tore off the first half of the paper which contained the items, and presented the other half to the county treasurer for payment. The treasurer refused to pay:—Held, that on account of the mutilation of the order the treasurer was not indictable for this refusal. *Reg. v. Jones*, 9 C. & P. 401; 2 M. C. C. 171.

If, on an indictment for disobeying an order of justices, in not abating a nuisance under the Building Act, it appears to have been founded on an order made in a case in which the justices had no jurisdiction, the judge at nisi prius will direct an acquittal, although the defect appears on the record. *Res v. Hollis*, 2 Stark. 536.

An indictment lies against the president and stewards of a friendly society for disobeying an order of justices addressed to them to re-admit a member, though it is sworn that the power of doing so is not in the president and stewards, but in a committee. *Res v. Wade*, 1 B. & Ad. 861.

The general rule that an indictment, and not a mandamus, is the proper mode of enforcing obedience by a ministerial officer to an order of sessions, does not prevail where the court sees that the ministerial officer is put forward merely as a nominal party, and that other persons are there who are to be compelled to perform the duty. *Reg. v. Wood Ditton*, 18 L. J., M. C. 218.

Under the 7 & 8 Vict. c. 101, an order in bastardy, invalid on the face of it, was made, and afterwards superseded, by the same magistrates; and, upon a fresh application, a second order was made, against which there was no appeal:—Held, that the second order was valid; and an indictment for disobedience to such order was upheld. *Reg. v. Brisby*, 3 New Sess. Cas. 591; T. & M. 109; 1 Den. C. C. 416; 18 L. J., M. C. 157; 13 Jur. 520.

On dismissing an appeal against a poor-rate, it was ordered by the sessions, that the appellants. "upon service of the order, or a true copy thereof, should pay to the respondents 91l. for their costs and charges by reason of the appeal." An indictment for disobedience of the order stating that a true copy of it was served on the defendants, who then and there had notice of the order, is sufficient. *Reg. v. Mortlock*, 7 Q. B. 459; 2 New Sess. Cas. 108; 14 L. J., M. C. 153; 9 Jur. 621.

Held, also, that it was no objection to the order, that the amount of costs, having in the meantime being taxed by the clerk of the peace, was inserted in the order at an adjourned sessions, as the circumstances of the case warranted the conclusion that the parties assented to such a course. *Ib.*

Upon the trial of an indictment for disobeying an order of justices, the recital upon the face of the order of the facts giving the magistrates jurisdiction is not evidence of the existence of such facts; nor is the setting out of the order in *hæc verba* in the indictment a sufficient allegation of the truth of the facts recited therein. *Res v. Gilkes*, 2 M. & R. 454; 8 B. & C. 439; 3 C. & P. 52.

Not Registering Birth.]—The 6 & 7 Will. 4, c. 86, s. 20, which enacts, that the father or mother of a child, or, in case of their illness or absence, the occupier of the house in which the child should have been born, shall, within forty-two days after the birth, give information of the particulars thereof to the registrar, upon request, is imperative, and the party disobeying it is liable to an indictment. *Reg. v. Price*, 3 P. & D. 421; 11 A. & E. 727; 4 Jur. 291.

Overseers not Accounting.]—An indictment against overseers, on 4 & 5 Will. 4, c. 76, s. 47, for not accounting to the auditor of a union upon request, on a day appointed by him, is bad, unless it appears that there was some rule, order or regulation of the commissioners, that the overseers should account upon such request. *Reg. v. Crossley*, 2 P. & D. 319; 10 A. & E. 132; 3 Jur. 675.

Disobedience to Order of Court of Competent Jurisdiction.]—If there is a positive averment of disobedience of an order of a court of competent jurisdiction, an indictment is good, without a direct allegation of that which is the foundation of such jurisdiction; nor can a defendant otherwise avail himself, either at the trial or elsewhere, but by shewing a want of jurisdiction in the court. *Reg. v. Mytton*, Cald. 536; 1 Bott's P. L. 428, n.; 4 Dougl. 383; 3 Esp. 200, n.

2. GRAND JURY, POWERS OF.

An indictment consisting of two counts, one for a riot, indorsed by the jury ignoramus, the other for an assault, returned *billa vera*, is good. *Reg. v. Fieldhouse*, Cowp. 325.

If the grand jury at the assizes or sessions has ignored a bill, they cannot find another bill against the same person for the same offence at the same assizes or sessions; and if such other bill is sent before them they should take no notice of it. *Reg. v. Humphreys*, Car. & M. 601; *S. P.*, *Reg. v. Austin*, 4 Cox, C. C. 385; see *contra*, *Reg. v. Newton*, 2 M. & Rob. 503.

But a prisoner, who had been arrested in Canada under the Colonial Arrest Act) 6 & 7 Vict. c. 34, (s. 5, upon a charge of burglary, for which the bill was ignored, was allowed to be arraigned upon another charge. *Reg. v. Phillips*, 1 F. & F. 105.

3. DEMURRER AND QUASHING INDICTMENT.

Statute.]—By 14 & 15 Vict. c. 100, s. 25, *every objection to any indictment for any formal defect apparent on the face thereof shall be taken, by demurrer or motion to quash such indictment, before the jury shall be sworn, and not afterwards.*

Demurrer—Objections to Jurisdiction.]—Upon a demurrer to an indictment found in an inferior court, objections may be taken as well to the jurisdiction of such court, as to the subject-matter of the indictment. *Reg. v. Fearnley*, 1 T. R. 316.

What may be Demurred to.]—It is no objection on demurrer, that several different defendants are charged, in different counts of an indictment, for offences of the same nature. *Reg. v. Kingston*, 8 East, 41.

A mistake in the year of the Queen's reign in which the offence is stated to have occurred is corrected by pleading over, and can only be taken advantage of on demurrer. *Reg. v. Fenwick*, 4 Cox, C. C. 139; 2 C. & K. 915.

An indictment for a nuisance is not to be quashed, but is to be demurred to. *Reg. v. Sutton*, 4 Burr. 2116.

Whole Record looked at.]—On a demurrer to an indictment, the superior court will look into the whole record. *Reg. v. Fearnley*, 1 Leach, C. C. 425.

Pleading over to.]—A prisoner cannot of right demur and plead over to an indictment for felony. *Reg. v. Odgers*, 2 M. & Rob. 479.

A prisoner on an indictment for murder may demur, and if the demurrer is overruled, he may plead not guilty; and, semble, that he may de-

mur and plead over to the felony at the same time. *Reg. v. Phelps*, Car. & M. 180; *S. P.*, *Reg. v. Adams*, Car. & M. 29. But see *Reg. v. Mitchell*, 3 Cox, C. C. 31.

In embezzlement, if the prisoner demurs to the indictment, and the demurrer is decided against him, he may still plead over to the felony, and take his trial. *Reg. v. Purchase*, Car. & M. 617.

The court has a discretion to allow a defendant to demur and plead over to an indictment for a misdemeanor. *Reg. v. Birmingham and Gloucester Railway Company*, 3 Q. B. 223; 2 G. & D. 236; 6 Jur. 804.

An indictment against a township for non-repair of a highway, alleged that the inhabitants, "the common highway being in decay, from the time whereof the memory of man is not to the contrary, ought to repair, and still ought to repair when and so often as it shall become necessary." The indictment contained no allegation that the defendants had ever repaired the road. The court granted leave to demur, with liberty to plead over in case of judgment against them on the demurrer. *Reg. v. Tryddyn*, 1 B. C. C. 19; 21 L. J., M. C. 108.

Demurrer after Plea.]—Where a prisoner, in felony, has, in the absence of his counsel, pleaded to an indictment which is objectionable on demurrer, the judge will, on the application of his counsel, allow him to demur before the evidence is gone into. *Reg. v. Purchase*, Car. & M. 617.

Where a defendant had pleaded inadvertently to an indictment under circumstances which might shew it to have been a mistake on his part, the court refused to allow him to withdraw his plea for the purpose of demurring, where the objection was one of a technical character, not in any way affecting the merits of the case. *Reg. v. Brown*, 2 Cox, C. C. 127; *S. P.*, *Reg. v. Odgers*, 2 M. & Rob. 479.

Rule to Join in Demurrer.]—Besides the common four-day rule on a defendant in misdemeanor, to join in demurrer to his plea, there must be a peremptory rule giving him a certain day in the discretion of the court, without which judgment cannot be signed against him. *Reg. v. Johnson*, 6 East, 583.

Judgment.]—If a defendant demurs to an indictment, whether in abatement or otherwise, the court will not give judgment against him to answer over, but final judgment. *Reg. v. Gibson*, 8 East, 107, 111.

If an indictment for felony is demurred to, and judgment is given against the prisoner on demurrer, such judgment is final, and sentence will be passed upon it; and it is not a judgment quod respondeat oster. *Reg. v. Fuderman*, 3 C. & K. 359; T. & M. 286; 4 Cox, C. C. 359.

When Queen's Bench will Quash or Stay Proceedings.]—The Queen's Bench will not quash or stay proceedings on an indictment, if there is no obvious defect upon the face of the indictment. *Reg. v. Burnby*, 5 Q. B. 348; D. & M. 362; 13 L. J., M. C. 29; 8 Jnr. 240.

An indictment for perjury committed upon an examination before a surveyor-general of the customs did not aver that it was preferred under the direction of the commissioners, under 3 & 4 Will. 4, c. 53, s. 112, and motion was made to

quash the indictment or to stay proceedings, upon an affidavit that such direction had not been given. The court refused to interfere summarily. *Id.*

Two indictments, the one for misdemeanor, the other for felony, had been removed into the Queen's Bench. The court refused to quash them upon an affidavit stating that they both related to the same transaction. *Reg. v. Stockley*, 2 G. & D. 728; 3 Q. B. 238.

Where a clear defect of jurisdiction appears on the face of an indictment, or is shewn by affidavit, the court will, on the application of a defendant, quash the indictment after he has pleaded. In a doubtful case the court will exercise its discretion, and leave him to his remedy by writ of error. *Reg. v. Keane*, 4 B. & S. 947; 9 Cox, C. C. 433; 33 L. J., M. C. 115; 10 Jur., N. S. 724; 9 L. T. 719.

Where a court of quarter sessions had quashed an indictment which was within their jurisdiction, the court will not inquire, the order being brought up by certiorari, whether the indictment was properly quashed; the proper way of raising such a question is by a writ of error. *Reg. v. Wilson*, 6 Q. B. 620; 1 New Sess. Cas. 427; 8 Jur. 1009.

The court refused to quash upon motion an indictment for selling by false weights. *Rev v. Crookes*, 3 Burr. 1841.

Or an indictment against several for entering a lead mine and carrying away lead, on the ground that it was a mere trespass. *Rev v. Johnston*, 1 Wils. 325.

But an indictment for converting a house into a hospital for taking in and delivering lewd, idle and disorderly unmarried women, was quashed. *Rev v. Macdonald*, 3 Burr. 1645.

The court will not, on the application of the defendant, quash an indictment for perjury. *Reg. v. Withers*, 4 Cox, C. C. 17.

Where an indictment at common law for disobeying an order of sessions for the maintenance of a bastard child was defective, but only on points which rendered it bad on demurrer, the court refused to interfere by quashing it. *Reg. v. Taylor*, 9 D. P. C. 600; 5 Jur. 679.

— **Rule Absolute in First Instances.**—A rule to quash an indictment for informality at the instance of the prosecutor, is absolute in the first instance, although the defendant has removed it by certiorari, and has not yet appeared and pleaded. *Reg. v. Stowell*, 1 D., N. S. 320; 5 Jur. 1010.

— **Not Quashed in Part.**—An indictment cannot be quashed in part. *Reg. v. Withers*, 4 Cox, C. C. 17.

— **Where Sessions have Jurisdiction.**—An order of quarter sessions, brought up by certiorari, appeared to be an order quashing an indictment containing counts for forcible entries, assaults and a riot.—Held, that the sessions, having jurisdiction over the subject-matter of the indictment, had jurisdiction to quash it. *Reg. v. Wilson*, 6 Q. B. 620; 1 New Sess. Cas. 427; 8 Jur. 1009.

But an indictment for forgery found at the quarter sessions is a nullity, and therefore, where indictments for forging requests for the delivery of goods had been found at the quarter sessions, and transmitted to the assizes, the judge ordered

that they should be quashed and new indictments prepared at the assizes. *Reg. v. Rigby*, 8 C. & P. 770.

A judge at nisi prius has no jurisdiction to try an indictment for perjury at common law found at the quarter sessions, and removed by certiorari into the Queen's Bench; an indictment so found being void. *Rev v. Haynes*, R. & M. 298.

Where several different defendants are charged in different counts of an indictment for offences of the same nature, it may be a ground for applying to the court to quash the indictment. *Rev v. Kingston*, 8 East, 41.

An indictment for a nuisance must be demurred to and cannot be quashed. *Rev v. Sutton*, 4 Burr. 2116.

— **When Quashed.**—After judgment on demurrer, an indictment cannot be quashed at the instance of the prosecutor. *Reg. v. Smith*, 2 M. & Rob. 109.

The court will not quash a defective indictment on the motion of the prosecutor, after plea pleaded, before another good indictment is found. *Rev v. Wynn*, 2 East, 226.

— **Terms.**—Terms may be imposed on a prosecutor before he is allowed to quash his own indictment. *Rev v. Webb*, 3 Burr. 1468; 1 W. Bl. 460.

An indictment against a defendant, standing first in order in the paper, was moved to be quashed on the usual terms; but the court only allowed it to be quashed on disclosing the name of the prosecutor, and that the substituted indictment should stand in the same situation as the first would have done. *Rev v. Glenn*, 3 B. & A. 373.

A person who has pleaded to an indictment which is invalid, on account of its having been found upon the testimony of witnesses not duly sworn to give evidence, may be required to plead to another indictment for the same offence, without the first indictment being quashed by the court. *Rev v. Chamberlain*, 6 C. & P. 97.

A., being indicted for perjury at the spring assizes, 1843, at those assizes entered into recognizances to try at the summer assizes, 1844; but, it being discovered before that time that the indictment was defective, another indictment was preferred and found at those assizes, on which the prosecutor wished the defendant to be tried:—Held, that the defendant was entitled to have the first indictment disposed of before he could be tried on the second; but the judge quashed the first indictment upon the terms of the prosecutor paying the defendant his costs of the traverse and recognizance, and the defendant proceeding to trial on the second indictment without traversing. *Reg. v. Dunn*, 1 C. & K. 730.

4. TRIAL WHEN INDICTMENT IS NOT GOOD.

A judge may refuse to try an indictment clearly bad in point of law. An indictment for perjury, not averring the matters falsely sworn to be material, nor shewing them to be so, is within this authority. *Rev v. Tremaine*, 5 D. & R. 413; 3 B. & C. 761; R. & M. 147; S. P., *Rev v. Hipper*, R. & M. 210.

Counsel are not allowed to argue at length the invalidity of an indictment for the purpose of

inducing the court to refuse to try it. But it is sometimes convenient for counsel to suggest a point on which an indictment is clearly bad, to save the time of the court. *Rex v. Abraham*, 1 M. & Rob. 7.

5. BINDING OVER PROSECUTOR TO PROSECUTE.

Statute.]—By 22 & 23 Vict. c. 17, s. 1, *no bill of indictment for perjury, subornation of perjury, conspiracy, obtaining money or other property by false pretences, keeping a gambling-house, keeping a disorderly house, and any indecent assault, shall be presented to or found by any grand jury, unless the prosecutor or other person presenting such indictment has been bound by recognizances to prosecute or give evidence against the person accused of such offence, or unless the person accused has been committed to or detained in custody, or has been bound by recognizance to appear to answer to an indictment to be preferred against him for such offence, or unless such indictment for such offence, if charged to have been committed in England, be preferred by the direction or with the consent in writing of a judge of one of the superior courts of law at Westminster, or of the attorney-general or solicitor-general for England, or unless such indictment for such offence, if charged to have been committed in Ireland, be preferred by the direction or with the consent in writing of a judge of one of the superior courts of law in Dublin, or of the attorney or solicitor-general for Ireland, or (in the case of an indictment for perjury) by the direction of any court, judge or public functionary authorized by 14 & 15 Vict. c. 100, to direct a prosecution for perjury.*

By s. 2, *where any charge or complaint shall be made before any one or more justices of the peace that any person has committed any of the offences aforesaid within the jurisdiction of such justice, and such justice shall refuse to commit or to bail the person charged with such offence to be tried for the same, then in case the prosecutor shall desire to prefer an indictment respecting the offence, it shall be lawful for the justice, and he is required to take the recognizance of such prosecutor to prosecute the charge or complaint, and to transmit such recognizance, information and depositions, if any, to the court in which such indictment ought to be preferred, in the same manner as such justice would have done in case he had committed the person charged to be tried for such offence.*

The 30 & 31 Vict. c. 35, ss. 1, 2, *limit the operation of the 22 & 23 Vict. c. 17, as to the presentation of bills of indictment mentioned in that act, containing different counts.*

When Magistrate bound to take Recognizance.—Discretion.]

—A magistrate, if he refuses to commit or bail the person charged, is bound, under 22 & 23 Vict. c. 17, s. 2, to take the recognizance of the prosecutor, if the information discloses any of the offences mentioned in the statute; but he has a discretion to refuse if no indictable offence is disclosed. *Wason, Ex parte*, 4 L. R., Q. B. 573; 38 L. J., Q. B. 302; 17 W. R. 881.

Where, therefore, the offence charged is that of conspiracy, by three persons, two of whom are members of the House of Lords, to deceive the House, and so to prevent the due course of justice and injure and prejudice a third person, by making statements in the House which they

knew to be false, the magistrate is right in refusing to take any proceedings: as members of either House of Parliament are not civilly or criminally liable for any statements made in the House, nor for a conspiracy to make such statements. *Id.*

The court will not interfere with the exercise of the discretion of the judge under this act. *Reg. v. Bray*, 3 B. & S. 255; 9 Cox, C. C. 215; 32 L. J., M. C. 11; 7 L. T. 248; 11 W. R. 7.

Consent of Judge to Prosecution.]—It is sufficient if the consent of the judge to the prosecution is given in writing; and no previous summons of or notice to the party, or even an affidavit of the facts, is necessary. *Id.*

Indictment—Form of.]—It is not necessary that an indictment should aver that the conditions imposed by 22 & 23 Vict. c. 17, s. 1, had been performed; e.g., that it had been preferred by the direction or with the consent of a judge, or of the attorney or solicitor general. *Knowlden v. Reg. (in error)*, 5 B. & S. 532; 9 Cox, C. C. 483; 33 L. J., M. C. 219; 10 Jur., N. S. 1177; 10 L. T. 691; 12 W. R. 957.

Recognizances, when Exhausted.]—Three persons were severally bound by recognizances to appear at the next session of the Central Criminal Court, and there surrender themselves, and plead to such indictment as might be found against them for or in respect of a charge of conspiracy to cheat and defraud. The prosecutors were also bound over to appear at such next session, and to prefer, or cause to be preferred, a bill of indictment against the persons accused of the offence of conspiracy, and duly to prosecute such indictment and give evidence thereon. At the next session an indictment was preferred and found, and the defendants surrendered; but in consequence of the absence of a material witness for the prosecution the trial was put off, and the recognizances duly respite until the next session. Before the next session the solicitor-general directed an indictment for a conspiracy to be preferred against the three defendants and a fourth person, and a second indictment was preferred and found against them all, upon which the original defendants appeared, but refused to plead. A plea of not guilty was entered for them, and they were found guilty and sentenced:—Held, that the indictment was preferred with proper authority, and the recognizances duly entered into, as the charge on which the defendants were tried was the same as that to which the recognizances related, and those recognizances were not exhausted by the first indictment being preferred, and the defendants surrendering. *Id.*

Statute applies to every Count.]—The provisions of the above statute must be complied with in respect to every count of an indictment to which they are applicable, and any count in which they have not been complied with must be quashed. *Reg. v. Fridge*, L. & C. 390; 9 Cox, C. C. 430; 33 L. J., M. C. 74; 10 Jur., N. S. 160; 9 L. T. 777; 12 W. R. 351.

An indictment contained two counts for obtaining money by false pretences on two several occasions, the requirements of the above statute having been complied with in respect of one of the cases only. The prisoner refused to

plead, and a plea of not guilty was entered by the direction of the court. Evidence was given upon each count, and the prisoner was convicted upon each:—Held, first, that the second count ought to have been quashed, and that therefore the conviction upon that count could not stand. *Ib.*

Held, secondly, that, as evidence was received which would have been inadmissible upon the trial of the first count alone, the conviction upon that count also was bad. *Ib.*

Discharging Recognizances.]—A prosecutor who has required the magistrates to take his recognizances to prosecute, on a charge within the 22 & 23 Vict. c. 17, s. 2, when the magistrates have refused to commit the person charged, must either go on with the prosecution or have his recognizances forfeited, as it would defeat the object of the statute if he was allowed to move to have his recognizances discharged. *Reg. v. Hargreaves*, 2 F. & F. 790.

6. COPY OF INDICTMENT, &c.

When Prisoner Entitled to.]—A prisoner upon his acquittal is not entitled *ex debito justitiæ* to a copy of his indictment. *Rea v. Brangan*, 1 Leach, C. C. 27.

Without an order of the court. *Morrison v. Kelly*, 1 W. Bl. 485.

A prisoner indicted for felony is not entitled to a copy of the indictment found against him, or to a copy of the jury panel, or to copies of the panels returned at former sessions of the court. *Reg. v. Mitchell*, 3 Cox, C. C. 1.

Where the application is opposed by the attorney-general, the court will not order a party indicted for embezzlement to be furnished with a copy of the indictments found against him, though they are very voluminous and contain a great many counts; but in such case the court will order the accused to be furnished with a full bill of particulars. *Reg. v. Hughes*, 4 Cox, C. C. 445.

A prisoner charged under 11 & 12 Vict. c. 12, is not of right entitled to a copy of the indictment, nor will the court exercise its discretion in his favour by awarding him a copy *ex gratiâ*. *Ib.*

But he is so entitled in cases of misdemeanor as a matter of right, without a previous application to the court. *Evans v. Philips*, 2 Selw. N. P. 952; 1 Phil. Evid. 407.

A prisoner is entitled to a copy of his indictment to enable him to plead *autrefois acquit*. *Rea v. Vanderecomb*, 2 Leach, C. C. 711; 2 East, P. C. 519.

A copy of an indictment is necessary on the trial of an action for malicious prosecution; and the court will not entertain the question whether it was obtained by fraud. *Caddy v. Barlow*, 1 M. & R. 275.

— **In Cases of Treason.]**—*See ante*, TREASON.

Record of Proceedings.]—Where a party has been tried at a court of quarter sessions, which has previously lapsed for want of due adjournment, he has a right to have a record of the proceedings made up by the clerk of the peace, although the object of the application is to enable him to support a plea of *autrefois con-*

vict. *Rea v. Middlesex (Justices)*, 3 N. & M. 110.

Crown Office Certificate.]—A prosecutor of an indictment for misdemeanor may obtain the usual crown office certificate of his bill having been found, for the purpose of taking out a judge's warrant against the defendant, without obtaining an office copy of the indictment. *Rea v. Redfern*, 2 A. & E. 387; 4 N. & M. 198.

7. CAPTION.

Jurisdiction.]—The caption of an indictment must shew that the court where it was found had jurisdiction. *Rea v. Fearnley*, 1 Leach, C. C. 425.

Of our Lady the Queen.]—An indictment beginning "The jurors of our lady the Queen," is not bad in arrest of judgment. The words, "of our lady the Queen," may be rejected as surplusage, the jurors intended being those mentioned in the caption. *Reg. v. Turner*, 2 M. & Rob. 214. See *Broome v. Reg. (in error)*, 12 Q. B. 834; 17 L. J., M. C. 152; 12 Jur. 538.

Names of Grand Jurors.]—In the nisi prius record of an indictment removed by certiorari, the names of the grand jurors who found the indictment need not be inserted in the caption. *Rea v. Davis*, 1 C. & P. 470.

It is not necessary to specify the names of the grand jury in the record of the caption of an indictment; it is enough to aver that the indictment was found by twelve good and lawful men, for the party indicted has an opportunity of resorting to the original caption, where the names of the jurors appear. *Aylett v. Rea (in error)*, 3 Bro. P. C. 529; 6 A. & E. 247, n.

The caption of an indictment on which a defendant had been convicted was drawn up by the clerk of the peace from the minutes of sessions, and returned with the indictment to the crown officer. It stated the presentment to be made by the oaths of A., B., C., D. (naming twelve grand jurors), and others, good and lawful men. A rule was obtained (with a view to a court of error), calling on the clerk of the peace to shew cause why the caption should not be amended by inserting the true names and number of the grand jury sworn. Proof was given by affidavit, that the real number exceeded twenty-five. The clerk did not deny this, but stated that he had no minute or recollection of the names or number:—Held, that the caption was not incorrect in omitting to state the number and all the names of the grand jury; and that, under these circumstances, no alteration could be made in it, and the defendant received judgment. *Rea v. Marsh*, 6 A. & E. 236; 1 N. & P. 187; 2 H. & W. 366.

Jurors of County.]—Semble, per Patteson, J., that an indictment which omits to describe the jurors as jurors of the county is bad. *Whitehead v. Reg. (in error)*, 7 Q. B. 582; 14 L. J., M. C. 165; 9 Jur. 594.

A caption stating that an indictment was found at the sessions holden at Warwick, in and for the county of Warwick, and by adjournment thence at Coventry, in and for the same county, upon the oath of A. B., &c., good

and lawful men of the county then and there sworn to inquire for the body of the county, is a sufficient caption under the 5 & 6 Vict. c. 110, annexing the county of the city of Coventry to Warwickshire, *Holloway v. Reg. (in error)*, 17 Q. B. 319; 2 Den. C. C. 287; 15 Jur. 825.

8. SEVERAL COUNTS.

Each Count a Separate Indictment.]—Each count in an indictment is, to all intents and purposes, a separate indictment in itself. *Latham v. Reg. (in error)*, 9 Cox, C. C. 516; 5 B. & S. 635; 33 L. J., M. C. 197; 10 Jur., N. S. 1145; 10 L. T. 571; 12 W. R. 908.

Where, therefore, it appeared by the record that the defendants pleaded not guilty generally to an indictment containing two counts, and that the jury found a verdict of guilty upon the one count, but it did not appear that they found any verdict upon the other:—Held, that the conviction and judgment upon the one were, nevertheless, good. *Id.*

Count for Felony and Misdemeanor.]—A prisoner was arraigned upon an indictment, containing one count for felony and one for misdemeanor; and, having pleaded not guilty, was duly tried and convicted of felony:—Held, that the misjoinder was no objection to the conviction. *Reg. v. Ferguson*, Dears. C. C. 427; 6 Cox, C. C. 454; 24 L. J., M. C. 61; 1 Jur., N. S. 73.

Adding Counts—Rights of Prisoner.]—Where the counsel for the prosecution has obtained leave to add a count on the ground that the indictment, as framed, will not enable him to disclose all the facts of the transaction, the defendant cannot claim to be tried at once upon the indictment already preferred, and the trial must be postponed. *Reg. v. Stone*, 1 F. & F. 310.

Adding Counts Charging Offence Withdrawn before Police Magistrate—Consent of Court.]—The defendant B., with others, was charged with having published alleged blasphemous libels on certain dates, in the F. newspaper. The fiat of the Director of Criminal Prosecutions had been obtained authorizing the prosecution. The summons on which the defendants were charged specified the particular dates of the libels on which the prosecution relied. At the first hearing before the magistrates the alleged libels were not read out in court, but the counsel for the prosecution gave an undertaking to furnish both to the court and the defendants particulars of the numbers of the newspaper and articles prosecuted. At the adjourned hearing the defendant B. called the attention of the court to the fact that the particulars furnished in pursuance of the undertaking contained a reference to an alleged libel published in an earlier number of the same newspaper but not included in the summons. The counsel for the prosecution then withdrew the number as not being in the summons. The defendants were committed for trial. The counsel for the prosecution subsequently applied ex parte to the recorder of London under 30 & 31 Vict. c. 35, s. 1, to add two counts to the indictments based upon the alleged libel contained in the number withdrawn before the police magistrate; the counsel for

the prosecution did not state in his application that he had so withdrawn the said number of the newspaper. The recorder granted leave; the two counts were added, and the indictment sent up to the grand jury, who found a true bill against the defendants in respect of the whole indictment. The indictment was removed by certiorari from the Central Criminal Court into the Queen's Bench Division of the High Court. The defendants then obtained a rule nisi, calling upon the prosecution to shew cause why the two additional counts should not be quashed:—Held, on argument of the rule, that the counts must be quashed on the ground that the leave of the court to add them was obtained on materials insufficient for the exercise of its discretion; and that the obtaining of such leave in cases under the Vexatious Indictments Act, and acts amending it, is not a mere formality, but must conform to the spirit and intention of those acts. *Reg. v. Bradlaugh* (No. 1), 15 Cox, C. C. 156; 47 L. T. 477; 31 W. R. 229; 47 J. P. 71.

9. AS TO THE ALLEGATIONS.

Statute.]—By 14 & 15 Vict. c. 100, s. 24, *no indictment for any offence shall be held insufficient for want of the averment of any matter unnecessary to be proved, nor for the omission of the words "as appears by the record," or of the words "with force and arms," nor for want of a proper or formal conclusion, nor for want of or imperfection in the addition of any defendant.*

Construction Generally.]—Except in certain cases, where technical expressions having grown by long use into law are required to be used, the same sense is to be put on the words of an indictment which they bear in ordinary acceptation; and if the sense of any word is in ordinary acceptation ambiguous, it will be construed according as the context and subject-matter require it to be, in order to make the whole consistent and sensible. The word "until" may therefore be construed either exclusive or inclusive of the day to which it is applied, according to the context and subject-matter. *Reg. v. Stevens*, 5 East, 244; 1 Smith, 437.

Inconsistency or Repugnancy.]—Every indictment must contain a complete description of such facts and circumstances as constitute the crime, without inconsistency or repugnancy. *Id.*

Surplusage.]—If an indictment is in itself good, tautologous words will be rejected as surplusage. *Reg. v. Morris*, 1 Leach, C. C. 109.

A bad indictment may be made good by rejecting as insensible and useless such words as obstruct the sense of it. *Reg. v. Redmond*, 1 Leach, C. C. 477.

An indictment, alleging that the defendant "did unlawfully obtain from the said C. C. a cheque for the sum of 8l. 14s. 6d. of the moneys of the said W. W.," is a sufficient allegation of the ownership of the cheque. *Reg. v. Godfrey*, Dears. & B. C. C. 426; 27 L. J., M. C. 151; 4 Jur., N. S. 146.

How Framed.]—A statement in an indictment may be either according to the fact or the legal operation. *Reg. v. Healey*, 1 M. C. C. 1.

Recital.—The words “as follow, that is to say,” when introductory to a recital in an indictment, do not bind the party to an exact and a verbatim recital. *Reg. v. Hart*, 1 Leach, C. C. 145; 2 East, P. C. 978; 1 Dougl. 193; Cowp. 229; *S. P.*, *Reg. v. May*, 1 Leach, C. C. 192.

Intent, when necessary.—Where an evil intent, accompanying an act, is necessary to constitute such act a crime, the intent must be alleged in the indictment, and proved; though it is sufficient to allege it in the prefatory part of the indictment. But where the act is in itself unlawful, the law infers an evil intent, and the allegation of such intent is merely matter of form, and need not be proved by extrinsic evidence on the part of the prosecutor. *Reg. v. Phillips*, 6 East, 464; 2 Smith, 550.

An indictment charged that a surgeon, knowingly and with intention to deceive, signed a certificate required by 9 Geo. 4. c. 41, s. 30, for the detention of persons in lunatic asylums, without having visited and personally examined the patient, contrary to the statute: the jury negatived the intention to deceive, and found him guilty:—Held, that in the description of the offence, the averment of intention was surplusage, and that such unnecessary matter might be rejected, as well in an indictment on a penal statute as at common law. *Reg. v. Jones*, 2 B. & Ad. 611.

Applicable to Two Offences.—An indictment, which may apply to either of two different definite offences, is bad. *Reg. v. Marshall*, 1 M. C. C. 158.

Duplicity.—Duplicity in an indictment is no ground of error. *Nash v. Reg. (in error)*, 9 Cox, C. C. 424; 4 B. & S. 935; 33 L. J., M. C. 94; 10 Jur., N. S. 819; 9 L. T. 716; 12 W. R. 421.

Interlineation.—If an indictment has an interlineation, and has a caret at the proper place, where the interlined words are to come in, the court will take notice of the caret, and read the indictment correctly. *Reg. v. Davis*, 7 C. & P. 319.

Ungrammatical.—An indictment, ungrammatical, is not bad if the real meaning is sufficiently expressed. *Reg. v. Stokes*, 1 Den. C. C. 307.

Ad commune nocumentum.—Since 14 & 15 Vict. c. 100, s. 24, an indictment for a public nuisance need not conclude ad commune nocumentum. *Reg. v. Helme*, Dears. C. C. 207; 22 L. J., M. C. 122; 17 Jur. 562.

Title of Statute.—Semble, when the title of an act is not correctly set out in an indictment, but the variation from the true title is so small that the court can have no doubt what statute is referred to by the title indicated, no objection can be sustained to the sufficiency of the indictment on account of the variance. *Reg. v. Westley*, Bell, C. C. 193; 29 L. J., M. C. 35; 5 Jur., N. S. 1362.

Feloniously.—In felonies the indictment must allege them to have been done feloniously; and therefore, where a statute creates a felony, it is not sufficient to charge the offender merely

in the terms of the statute. *Reg. v. Gray*, L. & C. 365; 9 Cox, C. C. 417; 33 L. J., M. C. 78; 10 Jur., N. S. 160; 9 L. T. 733; 12 W. R. 850.

Aider by Verdict.—After verdict defective averments in a second count of an indictment may be cured by reference to sufficient averments in the first count. *Reg. v. Waverton*, 2 Den. C. C. 340; 17 Q. B. 562; 21 L. J., M. C. 7; 16 Jur. 16.

There is no distinction between civil and criminal pleadings as to defective allegations, which are aided by verdict at common law. *Heymann v. Reg. (in error)*, 8 L. R., Q. B. 102; 28 L. T. 162; 21 W. R. 357; 12 Cox, C. C. 383.

10. DESCRIPTION OF THE PARTY ACCUSED.

Statute.—By 14 & 15 Vict. c. 100, s. 24, *no indictment for any offence shall be held insufficient for want of or imperfection in the addition of any defendant.*

When Unknown.—If the name of a prisoner is unknown, and he refuses to disclose it, an indictment against him as a person whose name is to the jurors unknown, but who is personally brought before the jurors by the keeper of the prison, will be sufficient. *Reg. v. —*, K. & R. C. C. 489.

But an indictment against him as a person to the jurors unknown, without something to ascertain whom the grand jury meant to designate, is insufficient. *Id.*

Servant.—An indictment against A. by the addition of “servant” was ill. *Reg. v. Checketts*, 6 M. & S. 88.

Wife or Widow—Amendment.—A woman charged with the murder of her husband was described as “A., the wife of J. O., late of the parish of S., in the county of W., labourer.” The judge ordered this to be amended by striking out the word “wife,” and inserting the word “widow.” *Reg. v. Orchard*, 8 C. & P. 565.

11. ALLEGATIONS OF TIME AND PLACE.

Statute.—By 14 & 15 Vict. c. 100, s. 24, *no indictment for any offence shall be held insufficient for omitting to state the time at which the offence was committed in any case where time is not of the essence of the offence, nor for stating the time imperfectly, nor for stating the offender to have been committed on a day subsequent to the finding of the indictment, or on an impossible day, or on a day that never happened.*

Where time is material, the time stated will be taken to be the true time. *Reg. v. Napper*, 1 M. C. C. 44; *S. P.*, *Reg. v. Brown*, M. & M. 163.

Time—After Verdict.—Where dates in an indictment are laid under a videlicet, the videlicet may be rejected after verdict in order to support the indictment. *Ryalls v. Reg. (in error)*, 11 Q. B. 781; 18 L. J., M. C. 69; 13 Jur. 259—Ex. Ch.

After verdict, to support an indictment, and to shew that the provisions of a statute have been complied with, dates laid under a videlicet will be taken to be true. *Reg. v. Scott*, Dears. &

B. C. C. 47; 25 L. J., M. C. 128; 2 Jur., N. S. 1096.

In an indictment for assault and battery, the only allegation of the year in which the offence was committed was "in the tenth year of our Sovereign Lady Queen Victoria:"—Held, that by 7 Geo. 4, c. 64, s. 20, this was no ground of error. *Broome v. Reg. (in error)*, 12 Q. B. 834; 17 L. J., M. C. 152; 12 Jur. 538—Ex. Ch.

— **Day before that mentioned in Statute.**—Where a statute makes an offence committed after a given day triable in the county where the party is apprehended, and authorizes laying it as if committed in that county, and does not vary the nature and character of the offence, it is no objection that the day laid in the indictment is before the day the statute mentions, if the offence was in fact committed after that day. *Rex v. Treharne*, 1 M. C. C. 298.

— **Day not yet arrived.**—The objection that an offence was laid in an indictment to have been committed on a day which had not yet arrived, could only be taken advantage of on demurrer, and could not be taken after a plea of not guilty. *Reg. v. Fenwick*, 2 C. & K. 915; 4 Cox, C. C. 139.

— **Place—Parish, whether necessary.**—In an indictment for burglary, it is sufficient to allege that the burglary was committed at a place, naming it, e.g., "at Norton-juxta-Kempsey, in the county aforesaid," without stating the place to be the parish, vill, chapelry, or the like. *Reg. v. Brookes*, Car. & M. 543.

— **No such place in County.**—It was no objection on the plea of not guilty that there was no such place in the county as that in which the offence was stated to have been committed, and the fact that there was no such place in the county could only be taken advantage of by plea in abatement. *Rex v. Woodward*, 1 M. C. C. 323.

— **What Parish.**—In an indictment, alleging a dwelling-house to be "situate at the parish aforesaid," the parish last mentioned must be intended. *Rex v. Richards*, 1 M. & Rob. 177.

A house is properly described as in the parish of Birmingham, although for certain ecclesiastical purposes that parish is divided into three divisions, each called a parish. *Reg. v. Howell*, 9 C. & P. 437.

— **When Material.**—Where place is material, the place stated will be taken to be the true place. *Rex v. Napper*, 1 M. C. C. 44; *S. P.*, *Rex v. Brown*, M. & M. 163.

— **Construction.**—Words of reference, as "there" and "said," in an indictment, will not be referred to the last antecedent, where the sense requires that they should be referred to some prior antecedent. *Wright v. Rex (in error)*, 3 N. & M. 892.

12. NAME OF PARTY INJURED, OR WHOSE PROPERTY STOLEN, &C.

Statute.—By 14 & 15 Vict. c. 100, s. 24, no indictment for any offence shall be held insuffi-

cient for that any person mentioned in the indictment is designated by a name of office, or other descriptive appellation instead of his proper name.

Assumed Name.—A prosecutor may be described by a name he has assumed, although it is not his right name, if he has been known by that name for several previous years. *Rex v. Norton*, R. & R. C. C. 510.

Marriage after Offence.—An indictment for robbery on an unmarried woman in her maiden name is good, although she marries before indictment found. *Rex v. Turner*, 1 Leach, C. C. 536.

Name by which usually known.—It is sufficient to describe a prosecutor by the name by which he is commonly and best known. *Reg. v. Gregory*, 2 New Sess. Cas. 229; 8 Q. B. 508; 15 L. J., M. C. 38; 10 Jur. 387.

A foreigner residing in this country, whose name was Charles Frederick Augustus William D'Este, and who was commonly called the Duke of Brunswick and Luneberg, though not de facto the reigning duke, was sufficiently described as Charles Frederick Augustus William, Duke of Brunswick and Luneberg. *Ib.*

Christian Names.—The prisoners were indicted for stealing certain articles from Richard Henry John Beaumont McCumming; there was evidence of the prosecutor's surname being McCumming, but there was no evidence what his christian names were:—Held, that the indictment was not sustainable. *Reg. v. Dent*, 2 Cox, C. C. 354.

The only evidence of the christian name of the prosecutor was that of a witness who had seen him sign an information, not in the presence of the prisoners, and also the depositions when before the magistrates, in the presence of the prisoners. The witness knew nothing of the prosecutor's christian name except from having seen him sign his name on those two occasions:—Held, that the witness's evidence was admissible to prove the fact of the prosecutor's name. *Reg. v. Toole*, Dears. & B. C. C. 194; 26 L. J., M. C. 79; 3 Jur., N. S. 420.

Transposition of Names.—Property stolen described in an indictment as belonging to J. H. S., whereas, in fact, the name was H. J. S., is improperly described. *Reg. v. James*, 2 Cox, C. C. 227.

Variance.—A count in an indictment charged that defendant made an assault upon one "Henry B.," "and him, the said William B., did beat, and other wrongs to the said William B.," did, to the "damage of the said William B." On motion in arrest of judgment, held sufficient. *Reg. v. Crispin*, 11 Q. B. 913.

Name Unknown.—If the name of a party killed is not known, he may be stated to be "a certain person to the jurors unknown." *Rex v. Clark*, R. & R. C. C. 358.

Idem sonans.—The name of John M'Nicoll, signed to a forged instrument, was in the setting out of the forged instrument in the indictment written John M'Nicole:—Held, no variance.

Reg. v. Wilson, 2 C. & K. 527; 1 Den. C. C. 284; 2 Cox, C. C. 426; 17 L. J., M. C. 82.

The question, whether the name of a prosecutor, as set forth in an indictment, and the name as it appears in evidence, are *idem sonans*, is a matter of fact which is for the jury; and where it is reserved as a question of law, the court cannot say that words spelt differently are the same in sound. *Reg. v. Davies*, 2 Den. C. C. 231; T. & M. 557; 20 L. J., M. C. 207; 15 Jur. 546.

Esquire.—The prosecutor was termed in the indictment J. N. B. esquire: it was proved that his name was J. N. B., but no evidence was given that he was an esquire:—Held, that the court would take notice that esquire was an addition, and not part of the name, and that it was immaterial that such addition should be proved as laid. *Reg. v. Keys*, 2 Cox, C. C. 225.

Unbaptized Child.—A child not named is a proper description in an indictment for ill-treatment of a child that has not acquired a name by baptism or usage. *Reg. v. Waters*, 2 C. & K. 864; T. & M. 57; 1 Den. C. C. 336; 18 L. J., M. C. 50; 13 Jur. 130.

But not baptized would be insufficient. *Ib.*

Illegitimate Child.—A bastard must not be described by his mother's name till he has acquired that name by reputation. *Re v. Clark*, 1 M. C. C. 358.

The deceased was an illegitimate child twelve days old, and it was not even suggested that it had been baptized, but the prisoner, its mother, had said that she should like to have the child named Mary Anne, and on two occasions afterwards called the child Mary Anne, and on another occasion Little Mary. The prisoner's master, who was the father of the child, had stated to one of the witnesses for the prosecution that he was a Baptist. The indictment alleged the child to be "a certain female child, whose name to the jurors was unknown." The prisoner was convicted, and the judges held the conviction to be right. *Re v. Smith*, 6 C. & P. 151; 1 M. C. C. 402.

An indictment charged the murder of Eliza Waters. The deceased was the illegitimate child of the prisoner, whose name was Ellen Waters; and a witness said on the trial—"The child was called Eliza; I took it to be baptized, and said it was Eleanor Waters' child:—Held, that it was not sufficient proof that the surname of the deceased was Waters. *Re v. Waters*, 7 C. & P. 250; 1 M. C. C. 457.

Peers.—A peer of Ireland cannot sue or prosecute by his name of dignity, but must be described by his proper name, with the addition of his degree and title. *Re v. Graham*, 2 Leach, C. C. 547.

An indictment for manslaughter described the deceased, who was a peer of Ireland, as "H. S., Baron M. of C., in the county of R., in that part of the united kingdom called Ireland." It was proved that H. was his christian name, S. his family surname, and Baron M., &c. his title:—Held, no variance, and that the court was not bound to construe H. S. to be one christian name. *Re v. Brinklett*, 5 C. & P. 416.

In an indictment for larceny of goods the property of a peer who is a baron, the goods may be

laid as the goods of G. T. R., Lord D., without styling him Baron D., although the more proper way to describe a peer is by his christian name, and his degree in the peerage, as duke, earl, baron, or the like. *Reg. v. Pitts*, 8 C. & P. 771.

In an indictment for stealing the goods of a peer, it is necessary to describe him by his christian name and title: describing him by the latter only, as the Earl Cornwallis, is insufficient. *Reg. v. Caley*, 5 Jur. 709.

A. and B. were tried on an indictment charging them with having assaulted the gamekeeper of George William Frederick Charles, Duke of Cambridge. At the trial, none of the witnesses could prove the christian names of the duke, but there was evidence that George William were two of his names, and that it was believed there were others:—Held, that the court was not bound, and was perfectly right in refusing to amend the indictment, by striking out the names of Frederick Charles; and that as there was no amendment, and no evidence of the duke's christian names, A. and B. were entitled to an acquittal. *Reg. v. Frost*, Dears. C. C. 474; 6 Cox, C. C. 526; 3 C. L. R. 665; 24 L. J., M. C. 116; 1 Jur., N. S. 407.

13. DESCRIPTION OF PROPERTY OR INSTRUMENT.

Statute.—By 14 & 15 Vict. c. 100, s. 7, *whenever it shall be necessary to make any averment in any indictment as to any instrument, whether the same consists wholly or in part of writing, print, or figures, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known, or by the purport thereof, without setting out any copy or facsimile of the whole or any part thereof.*

By s. 5, *in any indictment for stealing, embezzling, destroying or concealing, or for obtaining by false pretences any instrument, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known, or by the purport thereof, without setting out any copy or facsimile thereof, or otherwise describing the same or the value thereof.*

By s. 18, *in every indictment in which it shall be necessary to make any averment as to any money, or any note of the Bank of England, or any other bank, it shall be sufficient to describe such money, or bank note, simply as money without specifying any particular coin or bank note; and such allegation, so far as regards the description of the property, shall be sustained by proof of any amount of coin or of any bank note, although the particular species of coin of which such amount was composed, or of the particular nature of the bank note, shall not be proved; and in cases of embezzlement and obtaining money or bank notes by false pretences, by proof that the offender embezzled or obtained any piece of coin, or any bank note, or any portion of the value thereof, although such piece of coin or bank note may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, or to any other person, and such part shall have been returned accordingly.*

Tin or Iron.—In an indictment for receiving stolen tin, ingots of tin are properly described as

so many pounds weight of tin. *Reg. v. Mansfield*, Car. & M. 140.

So it would be proper to describe a bar of iron as so many pounds weight of iron. *Id.*

Particular Name acquired.—But if an article has obtained, in common parlance, a particular name of its own, it would be wrong to describe it by the name of the material of which it is composed; thus, it would be a misdescription to describe cloth as so many pounds weight of wool, or sovereigns as so many ounces of gold. *Id.*

Mixture.—Substances mechanically mixed should not be described "as a certain mixture consisting of, &c.," but by the names applicable to them before such mixture. Secus, with regard to substances chemically mixed. *Reg. v. Bond*, 1 Den. C. C. 517.

Bank Notes.—Bank notes are properly described in an indictment for larceny as money, although at the time they were stolen they were not in circulation, but were in the hands of the bankers themselves. *Reg. v. West*, Dears. & B. C. C. 109; 26 L. J., M. C. 6; 2 Jur., N. S. 1123.

Instruments—Setting out.—Instruments need not be set out in an indictment, except where it is material for the court to see that they fall within a particular description. That is not the case where a false pretence is charged. *Reg. v. Coulson*, T. & M. 332; 1 Den. C. C. 592; 19 L. J., M. C. 182; 14 Jur. 557.

In an indictment for publishing an obscene book, it is not sufficient to describe the book by its title only, for the words alleged to be obscene must be set out; and if they are omitted, the defect will not be cured by a verdict of guilty, and the indictment will be bad either upon arrest of judgment or upon error. *Bradlaugh v. Reg.*, 3 Q. B. D. 607; 38 L. T. 118; 26 W. R. 410—C. A. Reversing 2 Q. B. D. 569; 46 L. J., M. C. 286.

Mortgage Deeds not Goods and Chattels.—An indictment for burglary charged an intent to steal goods and chattels. The jury found that the prisoner broke into the house with intent to steal certain mortgage deeds. The mortgage deeds were valid subsisting securities for money which the prosecutor had advanced to the prisoner:—Held, that they could not properly be described as goods and chattels, and that the indictment was not proved. *Reg. v. Powell*, 5 Cox, C. C. 326; 2 Den. C. C. 302; 21 L. J., M. C. 78.

14. VALUE.

Statutes.—By 14 & 15 Vict. c. 100, s. 24, no indictment for any offence shall be held insufficient for want of the statement of the value or price of any matter or thing, or the amount of damage, injury or spoil, in any case where the value or price, or the amount of damage, injury or spoil, is not of the essence of the offence.

By s. 5, in any indictment for stealing, embezzling, destroying or concealing, or for obtaining, by false pretences, any instrument, it is unnecessary to describe the value thereof.

Guilder.—The word "guilder" is sufficiently an English word to justify its use in an indictment as a translation of the Polish word "zlotych," which is also called a guilder and a florin. *Rea v. Harris*, 7 C. & P. 416.

Specific Sum Due under a Levy.—Where a count stated that the defendant made an assault upon a person who was in lawful possession of goods, under a levy for a specified sum of money for arrears of assessed taxes, with intent unlawfully to force him out of possession:—Held, that it was necessary to prove that the specific sum was due, although no sum need have been stated. *Rea v. Ford*, 4 N. & M. 451.

Thing Stolen must be of Some Value.—Although to make a thing the subject of an indictment for larceny, it must be of some value, and stated to be so in the indictment, yet it need not be of the value of some coin known to the law, that is to say, of a farthing at the least. *Rea v. Morris*, 9 C. & P. 349. See 14 & 15 Vict. c. 100, s. 5.

When Value Essential.—Where value is essential to constitute an offence, and the value is ascribed to many articles collectively, the offence must be made out as to every one of those articles, the grand jury having ascribed that value only to all those articles collectively. *Rea v. Forsyth*, R. & R. C. C. 274.

15. CONTRA PACEM ET CONTRA FORMAM STATUTI.

Statute.—By 14 & 15 Vict. c. 100, s. 24, no indictment for any offence shall be held insufficient for want of the averment of any matter unnecessary to be proved, nor for the omission of the words "against the peace," nor for the insertion of the words "against the form of the statute," instead of "against the form of the statutes," or vice versa, nor for the want of a proper and formal conclusion.

The conclusion to a count "contra formam statuti" is now, by 14 & 15 Vict. c. 100, s. 24, no longer necessary. *Castro v. Reg.*, 6 App. Cas. 229; 50 L. J., Q. B. 497; 44 L. T. 350; 29 W. R. 669; 45 J. P. 452; 14 Cox, C. C. 546—H. L. (E.).

Before this Enactment.—Where an act of parliament does not create an offence, but alters the punishment for an offence at common law, it is not necessary that the indictment should conclude contra formam statuti. *Williams v. Reg.* (in error), 7 Q. B. 250; 14 L. J., M. C. 164; 10 Jur. 155.

An indictment preferred at the assizes under the 7 & 8 Vict. c. 2, for a crime committed on the high seas, need not conclude contra formam statuti. *Reg. v. Serra*, 2 C. & K. 53; 1 Den. C. C. 104.

Where a statute declares an offence and awards a punishment, and by a subsequent act the punishment is altered, the indictment for such offence should conclude against the form of the statutes. *Reg. v. Adams*, Car. & M. 299.

The omission of contra formam statuti in an indictment for a statutable offence was good ground for an arrest of judgment, and was not cured by 7 & 8 Geo. 4, c. 64, ss. 20, 21. *Reg. v. Radcliffe*, 2 M. C. C. 68; 2 Lewin, C. C. 57.

It was no objection to a conviction of manslaughter on an indictment for murder that the indictment did not conclude *contra formam statuti*. *Re v. Chatburn*, 1 M. C. C. 403.

In an indictment for an offence at common law, a conclusion of *contra formam statuti* might be rejected as surplusage. *Re v. Mathews*, 5 T. R. 162; *Nolan*, 202.

It is an offence at common law to obstruct the execution of powers granted by statute, and an indictment for such offence need not, and ought not, to conclude *contra formam statuti*. *Re v. Smith*, 2 Dougl. 441.

If one statute subjects an offence to a pecuniary penalty, and a subsequent statute makes it felony, an indictment for the felony concluding against the form of the statute (in the singular number only) is right. *Re v. Pim*, R. & R. C. C. 425.

When Copies of Statute Differ.—Where an indictment set out the title of an old statute agreeably to Ruffhead, which differed from a copy of the act printed by the king's printer, the court refused to direct a nonsuit without proof of an examination of the parliament rolls. *Re v. Barnett*, 3 Camp. 344.

16. AMENDMENT, WHEN ALLOWED.

Variance between Indictment and Documents.]

—By 11 & 12 Vict. c. 46, s. 4, after reciting that whereas a failure of justice frequently takes place in criminal trials by reason of variances between writings produced in evidence and the recital or setting forth thereof in the indictment or information, and the same cannot now be amended at the trial except in cases of misdemeanor, for remedy thereof, it is enacted, that it shall and may be lawful for any court of oyer and terminer and general gaol delivery, if such court shall see fit so to do, to cause the indictment or information for any offence whatever, when any variance or variances shall appear between any matter in writing or in print produced in evidence and the recital or setting forth thereof in the indictment or information whereon the trial is pending, to be forthwith amended in such particular or particulars by some officer of the court, and after such amendment the trial shall proceed in the same manner in all respects, both with regard to the liability of witnesses to be indicted for perjury and otherwise, as if no such variance or variances had appeared.

By 12 & 13 Vict. c. 45, s. 10, every court of general or quarter sessions of the peace, on the trial of any offence within its jurisdiction, whenever any variance or variances shall appear between any matter in writing or in print, produced in evidence, and the recital or setting forth thereof in the indictment, shall have the same power in all respects to cause the indictment to be amended, which is given to courts of oyer and terminer and general gaol delivery, with regard to offences tried before such last-mentioned courts by virtue of the 11 & 12 Vict. c. 46, s. 4, and after such amendment the trial shall proceed in the same manner in all respects, both with regard to the liability of witnesses to be indicted for perjury and otherwise, as if no variance or variances had appeared.

Variance between Indictment and Evidence.]

—By 14 & 15 Vict. c. 100, s. 1, whenever on the trial of any indictment for any felony or misdemeanor there shall appear to be any variance between the statement in such indictment, and the evidence offered in proof thereof, in the name of any county, riding, division, city, borough, town corporate, parish, township, or place mentioned or described in any such indictment, or in the name or description of any person or persons, or a body politic or corporate, therein stated or alleged to be the owner or owners of any property, real or personal, which shall form the subject of any offence charged therein, or in the name or description of any person or persons, body politic or corporate, therein stated or alleged to be injured or damaged, or intended to be injured or damaged by the commission of such offence, or in the christian name or surname, or both christian name and surname, or other description whatsoever of any person or persons whomsoever therein named or described, or in the name or description of any matter or thing whatsoever therein named or described, or in the ownership of any property named or described therein, it shall and may be lawful for the court before which the trial shall be had, if it shall consider such variance not material to the merits of the case, and that the defendant cannot be prejudiced thereby in his defence on such merits, to order such indictment to be amended, according to the proof, by some officer of the court or other person, both in that part of the indictment where such variance occurs and in every other part of the indictment which it may become necessary to amend, on such terms as to postponing the trial to be had before the same or another jury, as such court shall think reasonable;

And after any such amendment the trial shall proceed, whenever the same shall be proceeded with, in the same manner in all respects, and with the same consequences, both with respect to the liability of witnesses to be indicted for perjury and otherwise, as if no such variance had occurred; and in case such trial shall be had at Nisi Prius, the order for the amendment shall be indorsed on the postea, and returned together with the record, and thereupon such papers, rolls, or other records of the court from which such record issued as it may be necessary to amend, shall be amended accordingly by the proper officer, and in all other cases the order for the amendment shall either be indorsed on the indictment or shall be engrossed on parchment, and filed, together with the indictment, among the records of the court:

Provided, that in all such cases where the trial shall be so postponed as aforesaid it shall be lawful for such court to respite the recognizances of the prosecutor and witnesses, and of the defendant, and his surety or sureties, if any, accordingly, in which case the prosecutor and witnesses shall be bound to attend to prosecute and give evidence respectively, and the defendant shall be bound to attend to be tried at the time and place to which such trial shall be postponed, without entering into any fresh recognizances for that purpose, in such and the same manner as if they were originally bound by their recognizances to appear or prosecute or give evidence at the time and place to which such trial shall have been so postponed:

Provided always, that where any such trial shall be to be had before another jury, the crown and the defendant shall respectively be entitled

to the same challenges as they were respectively entitled to before the first jury was sworn.

Validity of Verdicts and Judgments after Amendment.]—By s. 2, every verdict and judgment which shall be given after the making of any amendment under the provisions of the act shall be of the same force and effect in all respects as if the indictment had originally been in the same form in which it was after such amendment was made.

Form of Records after Amendment.]—By s. 3, if it shall become necessary at any time for any purpose whatsoever to draw up a formal record in any case where any amendment shall have been made under the provisions of the act, such record shall be drawn up in the form in which the indictment was after such amendment was made, without taking any notice of the fact of such amendment having been made.

On Demurrer or Motion to Quash Indictment.]—By s. 25, every objection to any indictment for any formal defect apparent on the face thereof shall be taken, by demurrer or motion to quash such indictment, before the jury shall be sworn, and not afterwards; and every court before which any such objection shall be taken for any formal defect may, if it be thought necessary, cause the indictment to be forthwith amended in such particular by some officer of the court or other person, and thereupon the trial shall proceed as if no such defect had appeared.

Meaning of Indictment.]—By s. 30, the word indictment includes information, inquisition, and presentment as well as indictment, and also any plea, replication, or other pleading, and any *Nisi Prius* record.

At what Time Allowed.]—As a general rule a judge on the trial of an indictment will not allow an amendment to be made after the counsel for the defence has addressed the jury. *Reg. v. Rymes*, 3 C. & K. 326.

The proper course is for the prosecutor's counsel to adduce all his evidence and ask for the amendment before he closes his case, and if the amendment is made the prisoner's counsel addresses the jury on the indictment as amended. *Id.*

The power of amendment should be exercised before the case goes to the jury. *Reg. v. Frost*, Dears. C. C. 474; 6 Cox, C. C. 526; 3 C. L. R. 665; 24 L. J., M. C. 116; 1 Jur., N. S. 406.

On an objection to the entry of a judgment, on the ground that it was a general judgment upon all the counts, and one of them was bad, the court ordered the case to stand over to allow the prosecution to apply to the court below to amend. *Gregory v. Reg. (in error)*, 15 Q. B. 957; 19 L. J., M. C. 367; 15 Jur. 79—Ex. Ch.

Semble, per Cresswell, J., that after verdict the court has no power to amend a count so as to make a jury party to the finding. *Reg. v. Harris*, Dears. C. C. 344.

Amendments may be made even after the counsel for the prisoner has addressed the jury and closed his case. *Reg. v. Fullarton*, 6 Cox, C. C. 194.

An indictment for receiving, alleged by mistake that the prosecutor, instead of the prisoner, knew that the goods were stolen. The defect was

not noticed till after verdict, when a motion was made in arrest of judgment; but the court then amended the indictment:—Held, that the amendment could not be made after verdict. *Reg. v. Larkin*, Dears. C. C. 365; 6 Cox, C. C. 377; 2 C. L. R. 775; 23 L. J., M. C. 125; 18 Jur. 539.

Where no Enquiry before Magistrate.]—Where the case has not been inquired into before a magistrate, but the bill has been merely found by the grand jury, the court will not go out of its way to assist the prosecution by amending the indictment and inserting certain names, on objection taken that the charges therein set out are not specified with sufficient particularity. *Reg. v. O'Callaghan*, 14 Cox, C. C. 499.

Matter of Discretion.]—A. and B. were indicted for assaulting a gamekeeper, they being unlawfully upon land in the occupation of one "George William Frederick Charles Duke of Cambridge." A witness proved that "George William" were two of the duke's christian names, and that he had other christian names, which, however, were unknown to the witness. The court of quarter session refused to amend by striking out the words "Frederick Charles," and left it to the jury to say whether they were satisfied, upon the evidence, of the identity of the Duke of Cambridge as occupier of the land in question:—Held, first, that the power of amendment was in the discretion of the sessions; and that the court, therefore, could not say that the sessions were bound to amend. *Reg. v. Frost*, Dears. C. C. 474; 6 Cox, C. C. 526; 3 C. L. R. 665; 24 L. J., M. C. 116; 1 Jur., N. S. 406.

In what Cases—Christian Names.]—Held, secondly, that the sessions were right in refusing to make the amendment asked, but that they might have amended by striking out all the christian names; the indictment could then have been sustained, as containing a sufficient descriptive appellation of the prosecutor. *Id.*

Ownership of Property.]—In an indictment for larceny of property belonging to a banking company, the property was laid to be in the manager of the bank. The banking business was carried on by a joint-stock banking company, and there were more than twenty partners or shareholders; but no registration, or appointment of a public officer, under 7 Geo. 4, c. 46, was proved. The judge amended the indictment by stating the property to be in "W." (one of the partners) "and others":—Held, that under 7 Geo. 4, c. 64, s. 14, the amendment was right. *Reg. v. Pritchard*, 8 Cox, C. C. 461; L. & C. 34; 30 L. J., M. C. 169; 7 Jur., N. S. 557; 4 L. T. 340; 9 W. R. 579.

The secretary of a friendly society, of which A. B. and others were the trustees, was charged with embezzling money belonging to the society. In the indictment the property was laid as "of A. B. and others," without alleging that they were trustees of the society:—Held, that the indictment might be amended by adding the words "trustees of," &c. *Reg. v. Marks*, 10 Cox, C. C. 367.

An amendment in the name of the owner of stolen property may be made at the trial. *Reg. v. Vincent*, 2 Den. C. C. 464; 5 Cox, C. C. 537; 3 C. & K. 246; 21 L. J., M. C. 109; 16 Jur. 457.

Where stolen property has been laid in a wrong

person, the indictment may be amended. *Reg. v. Fullarton*, 6 Cox, C. C. 194.

— **Description of Statute.**—A judge has power to amend the description of an act of parliament in an indictment. *Reg. v. Westley*, Bell, C. C. 193; 29 L. J., M. C. 35; 5 Jur., N. S. 1362.

— **Feloniously.**—The court will not amend an indictment by striking out the word "feloniously," and thereby convert the charge into a misdemeanor, where the document given in evidence to sustain a charge of forgery will not sustain the charge of felony, although evidence of a common law misdemeanor. *Reg. v. Wright*, 2 F. & F. 320.

— **Name of Prosecutrix.**—An indictment charged with the intent to kill and murder Annie Welton. The prosecution failed to prove the child had ever borne such a name:—Held, that the indictment might be amended. *Reg. v. Welton*, 9 Cox, C. C. 297.

On objection before plea to the first count of the indictment that the words "a certain woman" were too vague, and, therefore, that the count was bad, the judge allowed the prosecution to amend by inserting the words "a woman to the jurors unknown" instead of the words objected to. *Reg. v. Titley*, 14 Cox, C. C. 502.

— **Guilty Knowledge.**—An indictment charging D. L. as a receiver of stolen goods, "he, the said A. B., well knowing them to have been feloniously stolen," is, in arrest of judgment, a bad indictment, and is not capable of being amended. *Reg. v. Larkin*, Dears. C. C. 365; 6 Cox, C. C. 377; 2 C. L. R. 775; 23 L. J., M. C. 125; 18 Jur. 539.

— **Description of Justices.**—The judge has power, under 14 & 15 Vict. c. 100, s. 1, to amend an indictment for perjury, describing the justices before whom the perjury was committed as justices for a county, where they are proved to be justices for a borough only. *Reg. v. Western*, 1 L. R., C. C. 122; 37 L. J., M. C. 81; 18 L. T. 299; 16 W. R. 730; 11 Cox, C. C. 93.

— **Description of Place when Material.**—An indictment for concealing the birth of a child, alleged the concealment to have been in and among a certain heap of carrots, and the evidence was that the body was laid upon the heap but behind it, so that it was hidden from the passers by, by the upper part of the heap:—Held, that the provision of 14 & 15 Vict. c. 100, s. 1, did not extend to such an amendment as this. *Reg. v. —*, 6 Cox, C. C. 391.

— **Drunk and Disorderly.**—Where an indictment stated that the prisoner had committed perjury at the hearing of a summons before the magistrates, charging a woman with being "drunk," whereas the summons was really for being "drunk and disorderly":—Held, that the court had power, under 14 & 15 Vict. c. 100, s. 1, to amend the indictment by adding the words "and disorderly." *Reg. v. Tymms*, 11 Cox, C. C. 645.

— **"Money" for Sum Stolen.**—A man was

indicted for stealing nineteen shillings and sixpence. He was proved to have stolen a sovereign:—Held, that by 14 & 15 Vict. c. 100, s. 1, the court at the trial had power to amend the indictment, if necessary, by substituting the word "money" for the words "nineteen and sixpence," and that, by s. 18, the indictment so amended was proved. *Reg. v. Gumble*, 2 L. R., C. C. 1; 42 L. J., M. C. 7; 27 L. T. 692; 21 W. R. 299.

— **Footway or Carriage-way.**—Indictment for obstructing a footway leading from A. to G. The footway was for half a mile from its commencement, as described in the indictment, a carriage-way; the obstruction was in the part beyond:—Held, that this was a misdescription, which ought to be amended under 14 & 15 Vict. c. 100, s. 1. *Reg. v. Sturge*, 3 El. & Bl. 734; 23 L. J., M. C. 172; 18 Jur. 1052.

— **Description of Prisoner.**—A woman was charged with the murder of her husband. In the indictment she was described as "A., the wife of J. O., late of the parish of S., in the county of W., labourer." The judge ordered this to be amended by striking out the word "wife" and inserting the word "widow." *Reg. v. Orchard*, 8 C. & P. 565.

Effect of Amendment—Court of Appeal.—When an indictment is amended at the trial, the court of appeal cannot consider it as it originally stood, but only in its amended form. *Reg. v. Webster*, L. & C. 77.

17. NOLLE PROSEQUI.

A nolle prosequi can only be entered by the authority of the attorney-general. *Reg. v. Dunn*, 1 C. & K. 730; *S. P., Elworthy v. Bird*, 9 Moore, 430; 2 Bing. 258.

Where, in an indictment for perjury, the attorney-general enters a nolle prosequi on the part of the crown, he does so on his own responsibility, and the Queen's Bench will not interfere. *Reg. v. Allen*, 9 Cox, C. C. 120.

An attorney-general is at liberty, after having entered a nolle prosequi on an indictment, to file an ex-officio information for the same offence; and the pendency of an indictment or an information is not a good plea to an information subsequently filed against the same party for the same offence. *Reg. v. Mitchell*, 3 Cox, C. C. 93.

18. JOINDER OF COUNTS, &C.

Joinder of Counts—Arrest of Judgment.—If several felonies are charged in the same indictment, it is not objectionable, either upon demurrer or in arrest of judgment, for on the face of the indictment every count imports to be for a different offence. *Anon.*, 2 Leach, C. C. 1105, n.

But if it appears before plea, or the jury is charged, that they are separate offences, it is usual to quash the indictment, lest it should confound the prisoner in his defence, or prejudice him in his right of challenge. *Id.*

It is no objection in arrest of judgment that the indictment contains several charges of the same nature in the different counts. *Young v. Rex (in error)*, 3 T. R. 98. And see *Rex v. Towle*, 2 Marsh. 466.

It is no ground in arrest of judgment, after a

conviction for a felony, that the indictment also contains a count for a misdemeanor. *Reg. v. Ferguson*, Dears. C. C. 427; 6 Cox, C. C. 454; 24 L. J., M. C. 61; 1 Jur., N. S. 73.

It is no ground of objection to an indictment in arrest of judgment that it contains several counts for distinct felonies. *Reg. v. Heywood*, L. & C. 451; 9 Cox, C. C. 479; 33 L. J., M. C. 133; 10 L. T. 464; 12 W. R. 764.

Joinder—What may be.]—Two indictments for the same offence, one for the felony under a statute, and the other for the misdemeanor at common law, ought not to be preferred or found at the same time. *Reg. v. Doran*, 1 Leach, C. C. 538.

If one endeavours to commit two separate offences, a count in an indictment charging that endeavour may contain those two offences. *Reg. v. Fuller*, 1 B. & P. 181.

Where Several Parties to Indictment.]—On an indictment against two, charging them with a joint offence, either may be found guilty; but they cannot be found guilty separately of separate parts of the charge. *Reg. v. Hempstead*, R. & R. C. C. 341.

And if they are found guilty separately, upon a pardon or nolle prosequi as to the one who stands second upon the verdict, the judgment may be given against the other. *Ib.*

If two men are indicted, and one of them appears to be innocent and the other guilty, but the prosecutor cannot identify them respectively, both must be acquitted. *Reg. v. Richardson*, 1 Leach, C. C. 387.

Non-joinder—Two Indictments—Practices.]—Where a person stole two pigs belonging to the same person at the same time, and after being convicted and punished for stealing one of the pigs, was indicted at a subsequent assize for stealing the other:—Held, that this might legally be done; but semble that in such a case, the second prosecution ought not to be proceeded with. *Reg. v. Brettell*, Car. & M. 609.

19. WHEN PROSECUTION PUT TO ELECTION.

In Cases of Misdemeanor.]—A person may be charged with several offences of the same nature in the same indictment, and the judge will not, in cases of misdemeanor, require the prosecutor to confine himself to one offence. *Reg. v. Jones*, 2 Camp. 131.

Joinder Embarrassing Prisoner.]—The proper course to pursue, when a joinder of counts has a tendency to embarrass a prisoner in his defence, is to apply to the judge either to quash the indictment or to compel the prosecutor to elect on which count he will proceed. *Reg. v. Heywood*, L. & C. 451; 9 Cox, C. C. 479; 33 L. J., M. C. 133; 10 L. T. 464; 12 W. R. 764.

Same Offence Charged Capitally and as a Misdemeanor.]—If two bills of indictment are preferred for the same offence, the one charging it capitally, the other as a misdemeanor, and both are found, the judge will put the party upon his election which to go upon, and direct an acquittal on the other. *Reg. v. Smith*, 3 C. & P. 412.

If an indictment contains a count for robbery,

and a count for an assault with intent to rob, the judge will put the prosecutor to his election. *Reg. v. Gough*, 1 M. & Rob. 71.

Same Transaction—Two Indictments.]—A prosecutor cannot maintain two indictments for misdemeanor for the same transaction: he must elect to proceed with one and abandon the other. *Reg. v. Britton*, 1 M. & Rob. 297.

A. was indicted for shooting at B., a gamekeeper; there being another indictment against A. for night-poaching:—Held, that although both indictments related to the same transactions, yet these were offences quite distinct from each other, and that the prosecutor ought not to be put to his election to go upon one indictment and to abandon the other. *Reg. v. Handley*, 5 C. & P. 565.

On a count for uttering several forged receipts, the court will not put the prosecutor to his election on which receipt to proceed, if they be all uttered at the same time. *Reg. v. Thomas*, 2 East, P. C. 934.

Where a prisoner was indicted in one count for stealing coal from the mine of H. J. G., and in the same count for stealing coal from the mines of thirty other proprietors, and it appeared that all the coal so alleged to be stolen had been raised at one shaft:—Held, that the prosecutor could not be called upon to elect on what charge he would go to the jury. *Reg. v. Bleasdale*, 2 C. & K. 765. *See also cases ante, LARCENY.*

On an indictment for rape charging the prisoner both as principal in the first degree, and as an aider and an abettor of other men in the rape, evidence may be given of several rapes on the same woman, at the same time, by the prisoner and other men, each assisting the other in turn, without putting the prosecutor to elect on which count to proceed. *Reg. v. Folkes*, 1 M. C. C. 354.

Principal and Accessory.]—Where an indictment contains two counts, the first charging the accused person as principal in a felony, the second charging him as accessory after the fact to the same felony, the prosecution must elect upon which count they will proceed. *Reg. v. Brannon*, 14 Cox, C. C. 394.

In what Cases.]—When there are counts in an indictment for forging a bill, acceptance, and indorsement, the prosecutor is not driven to elect on which he will proceed. *Reg. v. Young*, Peake's Add. Cas. 228.

If two are indicted for a conspiracy and for a libel, and at the close of the case for the prosecution, there is evidence against both as to the conspiracy, but no evidence against one of them as to the libel, the judge will put the prosecutor to elect which charge he will go upon before the defendant's counsel enters on the defence. *Reg. v. Murphy*, 8 C. & P. 276.

If two persons are jointly indicted for obstructing a highway, and on the evidence no joint act of obstruction appears, the judge will, as soon as the case for the prosecution is closed, put the prosecutor's counsel to elect which of them they will proceed against, and then take an acquittal for the other. *Reg. v. Lynn*, 1 C. & P. 528.

In indictments under 11 & 12 Vict. c. 46, s. 3, there may be as many counts charging a felonious receiving as there are counts charging stealing; and the prosecutor cannot be put to his election on what count or counts he will proceed. *Reg.*

v. *Beeton*, 1 Den. C. C. 414; 2 Cox, C. C. 451; T. & M. 87; 2 C. & K. 960; 4 New Sess. Cas. 60; 18 L. J., M. C. 117; 13 Jur. 394.

An indictment contained counts charging various misdemeanors, amongst them counts for conspiracy. There being evidence to go to the jury upon the conspiracy only, the prosecution was made to elect upon which count the case should be left to the jury. *Reg. v. Braun*, 9 Cox, C. C. 284.

Certain wharfingers and their servants being indicted in various counts for conspiracy to defraud, by false statements as to goods deposited with them, and insured by the owners against fire; one set of counts being laid with reference to a fire occurring on the 7th of June, 1864, and another, with reference to a fire occurring on the 25th of November, 1864:—Held, that the prosecution must elect on which of the two transactions, in the first instance, to rely. *Reg. v. Barry*, 4 F. & F. 389.

When an indictment contains counts for offences within the Admiralty jurisdiction, and others for offences on the high seas, the prosecution will not be put to their election as to which set of counts they will proceed upon. *Reg. v. Jones*, 11 Cox, C. C. 393.

A prisoner being charged on several counts with setting fire to a building described as in the occupation of different persons, also with setting fire to goods in a building so described, the prosecutor was not put to elect, as it might be all one act. *Reg. v. Davis*, 3 F. & F. 19.

In a case of arson, the indictment contained five counts, each of which charged a firing of a house of a different owner. It was opened, that the five houses were in a row, and that one fire burnt them all. Upon this opening, the judge would not put the prosecutor to elect, as it was all one transaction. *Reg. v. Trueman*, 8 C. & P. 727.

Discretion of Judge.—It is in the discretion of the judge whether he will allow several felonies to be given in evidence under one indictment; where they are, in fact, so mixed as not to be separated without inconvenience, it will be allowed. *Reg. v. Hinley*, 2 M. & Rob. 524.

The application for a prosecutor to elect is an application to the discretion of the judge, founded on the supposition that the case extends to more than one charge, and may therefore be likely to embarrass the prisoner in his defence. *Reg. v. Trueman*, 8 C. & P. 727.

Conviction on Count Elected.—A party was tried upon an indictment which contained two counts, one for embezzlement, and the other for larceny as a bailee. At the close of the case for the prosecution, it was objected that the indictment was bad for misjoinder of counts, and the court thereupon directed the counsel for the crown to elect upon which count he would proceed, the counsel for the prisoner contending that such a course was inadmissible. The counsel for the crown elected to proceed upon the second count, and on that count the prisoner was convicted:—Held, that the conviction was right. *Reg. v. Holman*, L. & C. 177; 9 Cox, C. C. 201; 8 Jur., N. S. 1082; 6 L. T. 474; 10 W. R. 718.

In Case of Larceny.—See *ante*, LARCENY and EMBEZZLEMENT.

20. TIME AND MODE OF RAISING FORMAL OBJECTIONS.

Statute.—By 14 & 15 Vict. c. 100, s. 25, every objection to any indictment for any formal defect apparent on the face thereof shall be taken by demurrer or motion to quash such indictment before the jury shall be sworn, and not afterwards; and every court before whom any such objection shall be taken for any formal defect may, if it be thought necessary, cause the indictment to be forthwith amended in such particular by some officer of the court or other person, and thereupon the trial shall proceed as if no such defect had appeared.

Aider by Verdict.—A defendant in an indictment cannot, after plea, take advantage of any defect which is aided after verdict by 7 Geo. 4, c. 64, s. 20; the only mode of taking advantage of such defects being by demurrer. *Reg. v. Ellis*, Car. & M. 564; S. P., *Reg. v. Law*, 2 M. & Rob. 197.

An indictment charged the commission of the offence "in the 10th year of our Sovereign Lady Victoria," not saying "of the reign:"—Held, that the objection, if otherwise valid, was cured by 7 Geo. 4, c. 64, s. 20. *Broom v. Reg.*, 3 Cox, C. C. 49; 12 Q. B. 834; 17 L. J., M. C. 152.

Counts under 2 & 3 Will. 4, c. 123, s. 3, stating that plates had engraved on them, in the Polish language, a promissory note for payment of money, to wit, for the payment of five florins, without stating the value, were good after verdict. *Ree v. Warshauer*, 1 M. C. C. 466.

Describing a foreign note wholly in the English language is not sufficient; but this objection is cured after verdict by 7 Geo. 4, c. 64, s. 21. *Ree v. Harris*, 7 C. & P. 429.

An indictment charged the prisoner with unlawfully receiving goods which had been obtained by false pretences well knowing that the goods had been so obtained, but omitted to set out what the particular false pretences were:—Held, that the objection not having been taken before plea was cured by the verdict of guilty. *Reg. v. Goldsmith*, 2 L. R., C. C. 74; 42 L. J., M. C. 94; 28 L. T. 881; 21 W. R. 791. See also *Hamilton v. Reg. (in error)*, 9 Q. B. 271; 2 Cox, C. C. 11; 16 L. J., M. C. 9; 10 Jur. 1028.

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1. VENUE.

a. Indictment.

Statute.—By 14 & 15 Vict. c. 100, s. 23, *it shall not be necessary to state any venue in the body of any indictment, but the county, city or other jurisdiction named in the margin thereof shall be taken to be the venue for all the facts stated in the body of such indictment: provided, that in cases where local description is or shall be required, such local description shall be given in the body of the indictment;*

Provided also, that where an indictment for an offence, committed in the county of any city or town corporate, shall be preferred at the assizes of the adjoining county, such county of the city or town shall be deemed the venue, and may either be stated in the margin of the indictment, with or without the name of the county in which the offender is to be tried, or be stated in the body of the indictment by way of venue.

And by s. 24, *no indictment for any offence shall be held insufficient for want of a proper or perfect venue.*

Parish—Addition of.—It was sufficient to allege a county as a venue in an indictment, without the addition of the parish, vill or other place. *Reg. v. Gompertz*, 14 L. J., M. C. 118; 9 Jur. 401.

At the Central Criminal Court, a person was indicted for a burglary in a house, which was stated in the indictment to be in the "parish of W." The prosecutor stated that the correct name of the parish was St. Mary W. In 4 & 5 Will. 4, c. 36, s. 2, this parish is called "the parish of W.:"—Held, sufficient. *Reg. v. St. John*, 9 C. & P. 40.

Aider by Verdict.—Where, in an indictment, after describing the defendant as "of the parish of A. in the county of B.," the offence is laid to have been committed "at the parish aforesaid," omitting any statement of county, this statement of the venue, if defective, was cured by 7 Geo. 4, c. 60, s. 20, after verdict, the case having been tried by a jury of the county first named. *Reg. v. Albert*, D. & M. 89; 5 Q. B. 37; 12 L. J., M. C. 117; 7 Jur. 741.

In an indictment for a misdemeanor, a count containing no statement of venue, either by reference or otherwise, was bad at common law after verdict, though a venue was stated in the margin of the indictment. *Reg. v. O'Connor*, 5

Q. B. 16; D. & M. 761; 13 L. J., M. C. 33; 7 Jur. 719.

Effect of, on Indictment.—The statement of venue in the margin implies only that the indictment is found by a grand jury of the county named, not (as in civil cases) that the complaint is laid as arising within the county. *Id.*

b. Offences, where Triable.

In Boroughs.—If a felony is committed in that part of the county of a town which has been added to it by the Boundary Act, 2 & 3 Will. 4, c. 64, and the Municipal Corporations Act, 5 & 6 Will. 4, c. 76, it is triable in the county of the town. *Re v. Piller*, 7 C. & P. 337.

Where an offence is committed in a borough which is situate partly in one county and partly in another, the offence is triable in either county, under 14 & 15 Vict. c. 55, s. 19. *Reg. v. Gallant*, 1 F. & F. 57.

Since the 5 & 6 Will. 4, c. 76, all offences committed in Bristol, and the cities and towns named in schedule C., are triable at the assizes for Gloucestershire, and the other counties named in that schedule; and the jurisdiction of the assizes is not affected by the grant of a recorder and a quarter sessions to such cities or towns. *Reg. v. Holden*, 8 C. & P. 605.

Offence on Sea near Shore of County.—Three were indicted for feloniously cutting and wounding. The venue was laid in Glamorganshire, and the indictment was preferred and tried at the assizes for that county. The offence was committed on board an American ship anchored in the Penarth Roads, in the Bristol Channel, three quarters of a mile from the coast of Glamorganshire, at a spot never left dry by the tide, but within a quarter of mile from the land which is left dry. The place in question is situated between the shore of the county of Glamorgan and two islands, which islands have always been treated as part of the county of Glamorgan. It was also about ten miles from the opposite shore of Somersetshire. The Penarth Roads are ninety miles from the mouth of the Channel:—Held, that the part of the sea where the vessel was when the offence was committed formed part of the body of the county of Glamorgan. *Reg. v. Cunningham*, Bell, C. C. 72; 8 Cox, C. C. 104; 28 L. J., M. C. 66; 5 Jur., N. S. 202; 32 L. T., O. S. 287; 7 W. R. 179.

Central Criminal Court.—By 9 & 10 Vict. c. 24, s. 3, *every writ of certiorari for removing an indictment from the Central Criminal Court into the Court of Queen's Bench shall specify the county or jurisdiction in which the same shall be tried; and a jury shall be summoned, and the trial proceed in the same manner in all respects as if the indictment had been originally preferred in that county or jurisdiction.*

— **By what Jury Tried.**—An indictment for libel was preferred in the Central Criminal Court, the publication being laid as having taken place "at the parish of St. M., in the county of Middlesex, within the jurisdiction of the Central Criminal Court." The defendant having removed it by certiorari, it came on to be tried at nisi prius, in Middlesex, when he withdrew his plea

of not guilty :—Held, that there was a sufficient venue assigned to the material fact. *Reg. v. Gregory*, 7 Q. B. 274 ; 14 L. J., M. C. 82 ; 9 Jur. 593.

Before 9 & 10 Vict. c. 24, s. 3, an indictment alleging the offence to have been committed at the parish of M., in the county of Middlesex, and within the jurisdiction of the Central Criminal Court, was found at the Central Criminal Court, and removed by certiorari :—Held, that the case was properly tried by a Middlesex jury. *Reg. v. Hunt*, 10 Q. B. 925 ; 17 L. J., M. C. 14 ; 11 Jur. 822.

— **Jurisdiction.**—*See ante*, JURISDICTION.

Near Boundaries of Adjoining Counties.—By 7 Geo. 4, c. 64, s. 12, *for the more effectual prosecution of offences committed near the boundaries of counties, or partly in one county and partly in another, it is enacted, that where any felony or misdemeanor shall be committed on the boundary or boundaries of two or more counties, or within the distance of 500 yards of any such boundary or boundaries, or shall be begun in one county and completed in another, every such felony or misdemeanor may be dealt with, inquired of, tried, determined and punished in any of the said counties, in the same manner as if it had been actually and wholly committed therein.*

— **How Measured.**—This means a distance of 500 yards measured in a direct line from the border, and not 500 yards by the nearest road. *Reg. v. Wood*, 5 Jur. 225.

— **In what Cases.**—An indictment at quarter sessions for the borough of S., stated that A., late of the parish of M., in the county of N., and in the borough of S., at the parish aforesaid, in the borough aforesaid, committed an assault. The marginal venue was “borough of S.” The parish is entirely in the county of N., the rest of the borough in the county of L. The defendant removed the indictment by certiorari, and a venire was awarded into the county of L., where he was tried and convicted. The offence was committed in a part of the parish which is in the borough, and within 500 yards from the boundary of L. :—Held, that the venue, as laid, was in N. ; and, notwithstanding the proceedings under the certiorari, that the trial was without jurisdiction, and judgment was arrested. *Reg. v. Mitchell*, 2 Q. B. 636 ; 2 G. & D. 274 ; 6 Jur. 505.

Held, also, that for the trial to be good in either county, under 7 Geo. 4, c. 64, s. 12, the offence must have been laid and tried in one and the same county. *Id.*

A felony committed in a county of a town, the style of which is “town of Kingston-upon-Hull and county of the same town :”—Held, to be sufficiently laid in the venue of an indictment tried in the next adjoining county, as “Yorkshire being the next adjoining county to the town and county of Kingston-upon-Hull, to wit,” the venue being imperfect, there being no “county of Kingston-upon-Hull.” *Reg. v. Grundy*, 2 Cox, C. C. 357.

Newcastle-upon-Tyne is a county corporate within 7 Geo. 4, c. 64, s. 12. *Errington's case*, 2 Lewin, C. C. 278.

The 38 Geo. 3, c. 52, s. 2, which relates to the trial of offences in an adjoining county, only applies to cities and towns corporate which are counties of themselves, and not to towns corporate which are not counties of themselves. *Reg. v. Milner*, 2 C. & K. 310.

Where an offence, committed within a limited jurisdiction, is tried in the adjoining county, under 38 Geo. 3, c. 52, s. 2, the venue in the margin of the indictment is properly laid in the county where the offence is tried, and there is no necessity for an averment in the body of the indictment to connect the county of the city or town within which the offence is alleged to have been committed with the venue of the county from which the jury comes. *Reg. v. Stokes*, 4 Cox, C. C. 451.

During Journeys or Voyages.—By 7 Geo. 4, c. 64, s. 13, *for the more effectual prosecution of offences committed during journeys from place to place, it is enacted, that where any felony or misdemeanor shall be committed on any person, or on or in respect of any property in or upon any coach, waggon, cart or other carriage whatever employed in any journey, or shall be committed on any person, or on or in respect of any property on board any vessel whatever employed on any voyage or journey upon any navigable river, canal or inland navigation, such felony or misdemeanor may be dealt with, inquired of, tried, determined and punished in any county, through any part whereof such coach, waggon, cart, carriage or vessel shall have passed in the course of the journey or voyage during which such felony or misdemeanor shall have been committed, in the same manner as if it had been actually committed in such county ;*

In all cases where the side, centre or other part of any highway, or the side, bank, centre or other part of any such river, canal or navigation shall constitute the boundary of any two counties, such felony or misdemeanor may be dealt with, inquired of, tried, determined and punished in either of the said counties, through or adjoining to or by the boundary of any part whereof such coach, waggon, cart, carriage or vessel shall have passed, in the course of the journey or voyage during which such felony or misdemeanor shall have been committed, in the same manner as if it had been actually committed in such county.

— **In what Cases.**—This enactment is not confined in its operation to the carriages of common carriers or to public conveyances, but if property is stolen from any carriage employed on any journey, the offender may, by virtue of the above section, be tried in any county through any part whereof such carriage shall have passed in the course of the journey during which such offence shall have been committed. *Reg. v. Sharpe*, Dears. C. C. 415 ; 6 Cox, C. C. 418 ; 24 L. J., M. C. 40.

Where the evidence is consistent with the fact of an article having been abstracted from a railway carriage, either in the course of the journey through the county of A., or after its arrival at its ultimate destination in the county of B., and the prisoner is indicted in A. under 7 Geo. 4, c. 64, s. 13, the case must go to the jury, who are to say whether they are satisfied that the larceny was committed in the course of the journey or afterwards. *Reg. v. Pierree*, 6 Cox, C. C. 117.

The act of stealing must be committed "in or upon the coach," to bring it within 7 Geo. 4, c. 64, s. 13. *Sharpe's case*, 2 Lewin, C. C. 233.

On an indictment for assault, it was proved that the assault was committed in one of the carriages of a train running from Brighton to New Cross, and before the train had arrived at the Three Bridges Station, in Sussex. At that station the prosecutrix left the carriage in which she had been riding with the defendant and rode in another carriage of the same train to New Cross, which is within the jurisdiction of the Central Criminal Court:—Held, that by the joint operation of the 7 Geo. 4, c. 64, s. 13, and 4 & 5 Will. 4, c. 36, s. 2, the indictment was properly preferred and tried at the Central Criminal Court. *Reg. v. French*, 8 Cox, C. C. 252.

Sending Threatening Letter.—[The offence of sending a threatening letter may be laid in the county where it is delivered by the post to the prosecutor. *Rea v. Esser*, 2 East, P. C. 1125; *S. P.*, *Rev. v. Gidwood*, 2 East, P. C. 1120; 1 Leach, C. C. 142.

If a man writes a letter with intent to provoke a challenge, seals it up and puts it into the post-office in Westminster, addressed to a person in the city of London, who receives it there, the writer may be indicted for this offence in the county of Middlesex. *Rev. v. Williams*, 2 Camp. 505.

Uttering Forged Documents.—[Putting a letter into the Manchester post-office, containing a forged instrument, is an uttering in the county of Lancaster. *Perkin's case*, 2 Lewin, C. C. 150.

Conspiracy.—[An information at common law for a conspiracy between the captain and purser of a man-of-war, for planning and fabricating false vouchers to cheat the crown (which planning and fabrication were done upon the high seas), is well triable in Middlesex, upon proof there of the receipt by the commissioners of the navy of the false vouchers transmitted thither by one of the conspirators through the medium of the post, and the application there of a third person, a holder of one of such vouchers (a bill of exchange), for payment, which he there received. *Rev. v. Brisac*, 4 East, 164.

Embezzlement.—[An indictment for embezzlement may be laid either in the county in which the money was received, or in the county where the prisoner disowned having received the money. *Rev. v. Hobson*, R. & R. C. C. 56; 1 East, P. C. Add. xxiv.; 2 Leach, C. C. 975.

If a servant receives money for his master in the county of A. and, being called upon to account for it in the county of B., there denies the receipt of it, he may be indicted for the embezzlement in the latter county. *Rev. v. Taylor*, 3 B. & P. 596.

A clerk, whose duty it was to remit at once to his employers in Middlesex all moneys collected by him as their clerk, collected at York, on the 18th of April, a sum of money as such clerk, but never remitted any portion of it. On the 19th and 20th of April he wrote and posted from places in Yorkshire to his employers in Middlesex letters making no mention of the money so collected, and on the 21st of April he wrote and

posted at Doncaster in Yorkshire to his employers in Middlesex a letter which was intended to make them believe that he had not then in fact collected the money in question. These letters were duly received by the employers in Middlesex:—Held, that the receipt of the letter of the 21st of April in Middlesex was sufficient to give jurisdiction to try the prisoner in Middlesex. *Reg. v. Rogers*, 3 Q. B. D. 28; 47 L. J., M. C. 11; 37 L. T. 473; 26 W. R. 61; 14 Cox, C. C. 22.

It was the duty of a commercial traveller to remit daily to his employers, who resided in London, the moneys which he collected, without reduction. He, on the 1st and 2nd March, 1878, collected at Newark two sums of money which he did not remit or account for till the first week in April, when one of his employers went to Grantham, where the prisoner resided, saw him and taxed him with receiving moneys and not accounting to them for them. The prisoner then and there handed to his employer a list of moneys he had collected and not accounted for, including the above two sums. There was no evidence that the prisoner returned to Grantham on either of the days, or at what time of the respective days he received the two sums of money. He was indicted and convicted at the borough of Grantham Quarter Sessions for embezzling the above two sums of money:—Held, that the conviction was bad, as there was no evidence of any embezzlement within the borough of Grantham. *Reg. v. Treadgold*, 39 L. T. 291.

A prisoner was a travelling salesman, whose duty it was to go into the county of D. every Monday to sell goods and receive money for them there, and return with it to his master in N. every Saturday. He received two sums of money for his master in D., but never returned to render any account. Two months afterwards he was met by his master in N., who asked him what he had done with the money. The prisoner said he was sorry for what he had done; he had spent it:—Held, that he was rightly indicted in N., there having been evidence to go to the jury of an embezzlement in N. *Reg. v. Murdock*, 2 Den. C. C. 298; T. & M. 604; 5 Cox, C. C. 360; 21 L. J., M. C. 22; 16 Jur. 19.

False Pretences.—[An indictment charged a defendant with obtaining, by false pretences, a post-office order. It was proved that the prosecutor, at the request of the prisoner, transmitted through the post a letter containing a post-office order:—Held, that the defendant was properly tried in the county in which that letter was posted, though it was received by the prisoner in a different county. *Reg. v. Jones*, 4 Cox, C. C. 198; 1 Den. C. C. 551; 4 New Sess. Cas. 953; 19 L. J., M. C. 162; 14 Jur. 533.

A. by means of false pretences contained in a letter written and posted by him in the county of C., received in the same county the money obtained by it, which was sent to him by the prosecutor in a letter. The letter containing the false pretences was received by the prosecutor in the county of the borough of C., and the letter enclosing the money was posted in that county. A. was indicted for obtaining the money by means of the false pretences contained in his letter:—Held, that the venue was well laid in the county of the borough of C. *Reg. v. Leech*, Dears. C. C. 642; 7 Cox, C. C. 100; 25 L. J., M. C. 77; 2 Jur., N. S. 428.

One who obtains goods by false pretences in one county, and afterwards brings them into another county, where he is apprehended with them, cannot be indicted for the offence in the latter county, but must be indicted in the county where the goods were obtained. *Reg. v. Stanbury*, 9 Cox, C. C. 94; L. & C. 128; 31 L. J., M. C. 88; 8 Jur., N. S. 84; 5 L. T. 686; 10 W. R. 236.

On an indictment for obtaining money by a false pretence which was alleged to have been by sending a certain false return of fees to the commissioners of the Treasury, it appeared that the return was received by them in Westminster, with a letter dated Northampton, and an affidavit sworn there; and that they, on the faith of it, drew up a minute, which operated as an authority to the paymaster-general to pay a certain amount to the prisoner (as compensation under 7 & 8 Vict. c. 96) at Westminster, the venue laid being Northamptonshire:—Held, that there was reasonable evidence that the false representation was forwarded from Northampton; that it was if false and fraudulent, a false pretence within the statute; that in effect the money was obtained by means of the minute, being a mere matter of regulation, and not a judicial proceeding; and that, therefore, the venue was right, and the indictment was supported. *Reg. v. Cooke*, 1 F. & F. 64.

Where a misdemeanor consists of different parts, as much of the charge as amounts to a misdemeanor in law must be proved in the county in which the venue is laid. *Rea v. Buttery*, 3 B. & C. 700; 5 D. & R. 616.

Receiving Stolen Property.—The half of a bank note which had been stolen during its transit through the post-office from S. in Wiltshire to Bristol, was afterwards inclosed by the prisoner in a letter addressed to the bankers at S., requesting payment of it. This letter was posted by the prisoner at Bath, and arrived with its contents in due course at S. There was no other evidence of any receipt or possession by the prisoner in Wiltshire:—Held, upon an indictment for receiving the stolen half note, that he was rightly tried in Wiltshire, as the possession of the post-office or of the bankers was his possession. *Reg. v. Cryer*, Dears. & B. C. C. 324; 26 L. J., M. C. 192; 3 Jur., N. S. 698.

c. Changing Venue.

In what Cases.—The court removed an indictment from the Central Criminal Court, and changed the venue from London to Westminster, where it was a prosecution instituted by the corporation of London, for a conspiracy in procuring false votes to be given at an election to the office of bridgemaster. *Reg. v. Simpson*, 5 Jur. 462.

Where the court grants a rule to change the venue in an indictment, on the ground that the defendant is unlikely to have a fair trial where it is laid, the court will change it to some other county on the same circuit. *Anon.*, 6 Jur. 131.

The court will permit a suggestion to be entered on the record, for the purpose of carrying the trial of a misdemeanor into an adjoining county on the application of one of several defendants, although it does not appear that the others have assented to the application, if

there is no reason for believing that they dissent. *Reg. v. Browne*, 6 Jur. 168.

In Felony.—On a trial for felony, the jury was not able to agree upon a verdict, and the prisoner was discharged. The crown then moved to have a second trial in some other county, on the ground that a fair trial could not be had in the county where the offence was committed:—Held, that the Court of Queen's Bench has the same jurisdiction to change the place of trial in felony as in misdemeanor, and that the place of trial should be changed, as the court was of opinion that a fair trial could not be had in the county where the offence was committed. *Reg. v. Barrett*, 4 Ir. R., C. L. 285.

The court has jurisdiction to change the place of trial in felony as well as in misdemeanor. *Reg. v. Fay*, 6 Ir. R., C. L. 436.

In order to View Premises.—When it appears to be necessary for the purpose of a criminal trial that the jury should have a view of premises situated in a different county from that in which the offence was committed, this is sufficient reason for ordering the trial to take place in such county. *Reg. v. Sheldon*, 32 L. T. 27.

Grounds of Changing—Fair Trial Impossible.—Where there was a prospect of a fair trial, the court refused to change the venue, though the witnesses resided in another county. *Reg. v. Dunn*, 11 Jur. 287.

The court will not permit the venue in an indictment to be changed for any other cause than the inability to obtain a fair trial in the original jurisdiction. *Reg. v. Patent Furika and Sanitary Manure Company*, 13 L. T. 365.

The court has no power to change the venue in a criminal case, nor will they order a suggestion to be entered on the roll to change the place of trial in an information for libel, on the ground of inconvenience and difficulty, in securing the attendance of the defendant's witnesses. *Reg. v. Cavendish*, 2 Cox, C. C. 176.

The court will remove an indictment for a misdemeanor from one county to another, if there is reasonable cause to apprehend or suspect that justice will not be impartially administered in the former county. *Rea v. Hunt*, 3 B. & A. 444; 2 Chit. 130.

It is no reason for changing the venue in an indictment for a conspiracy in destroying foxes and other noxious animals, that the gentry of the county in which the indictment was found are addicted to fox-hunting. *Rea v. King*, 2 Chit. 217.

Evidence of partiality must be extremely strong to induce the court to change the venue in a criminal information. *Rea v. Harris*, 3 Burr. 1330; 1 W. Bl. 378.

In felony, the court refused to allow the defendant to enter a suggestion for changing the venue, on the ground of prejudice pervading the county. *Rea v. Penpraze*, 1 N. & M. 312; 4 B. & Ad. 573.

The court has a discretionary power of ordering a suggestion to be entered on the record of an indictment for felony, removed thither by certiorari, for the purpose of awarding the jury process into a foreign county; but this power will not be exercised unless it is absolutely necessary for the purpose of securing an impartial

trial. *Ree v. Holden*, 2 N. & M. 167; 5 B. & Ad. 347.

It is no ground for removing the trial of an indictment from a large county, that a strong prejudice exists against the defendant in the county town where the trial is to take place. *Reg. v. Stephenson*, 5 Jur. 341.

Imposition of Terms on the Crown.—In an indictment for murder the trial had twice been ready for hearing; once in the local venue where the alleged crime was committed, and once in the venue fixed by the Winter Assizes Act. On both these occasions the trial was postponed on the ground that an impartial trial could not be had; it appearing on affidavit that large numbers of the jurors, who would try the case, were members of an association called "The Land League," which association had subscribed to the defence of the prisoners, the crime being of an agrarian nature. The venue was now changed from the local one, to a district where it appeared probable that a fair and impartial trial could be had, the crown being put under terms to expedite the hearing of the case, and to pay the costs to the accused persons necessarily incurred by the change of venue. *Reg. v. Phelan*, 14 Cox, C. C. 579.

2. ARRAIGNMENT.

How made.—Arraignments may be without holding up the hand. *Ree v. Ratcliffe*, 1 W. Bl. 3.

Standing Mute by Act of God or of Malice.—Where a prisoner, on being arraigned, stated that he was deaf, on which the indictment was read over to him, and he apparently did not hear it: the judge directed a jury to be impanelled to try whether he stood mute by the act of God or out of malice. *Ree v. Halton*, R. & M. 78.

And his counsel has a right to address the jury and call witnesses for him. *Ree v. Roberts*, Car. C. L. 57.

If a person stands mute upon his arraignment, the court may direct the sheriff to return a jury instant, to try whether he stands mute obstinately or by the visitation of God; and if they find that he stands obstinately mute, sentence may be passed without further inquiry. *Ree v. Mercier*, 1 Leach, C. C. 183; *S. P.*, *Ree v. Steel*, 1 Leach, C. C. 451.

Seemingly, that where a prisoner, being called on to plead, remains mute, the court cannot hear evidence to prove that he does so through malice, and then enter a plea of not guilty under 7 & 8 Geo. 4, c. 28, s. 2; but a jury must be impanelled to try the question of malice, and it is upon their finding that the court is authorized to enter the plea. *Reg. v. Israel*, 2 Cox, C. C. 263.

The 7 & 8 Geo. 4, c. 28, s. 2, authorizing the court to direct a plea of not guilty to be entered for a party who stands mute of malice, or will not answer directly to an indictment, applies to the case of a party who refuses to plead on the ground that he had previously pleaded to another indictment for the same offense, but which indictment was not valid in consequence of its having been found upon the testimony of witnesses not duly sworn to give evidence before the grand jury. *Ree v. Bilton*, 6 C. & P. 92.

A person, deaf and dumb, was to be tried for a

capital felony: the judge ordered a jury to be impanelled, to try whether he was mute by the visitation of God; the jury found that he was so. The jury was then sworn to try whether he was able to plead, which they found in the affirmative; and the prisoner by a sign pleaded not guilty. The judge then ordered the jury to be sworn to try whether the prisoner was now sane or not; and on the question, he directed the jury to consider whether the prisoner had sufficient intellect to comprehend the course of the proceedings, so as to make a proper defence, to challenge any juror he might wish to object to, and to comprehend the details of the evidence; and that if they thought he had not, they should find him not of sane mind. The jury did so, and the judge ordered the prisoner to be detained under 39 & 40 Geo. 3, c. 94, s. 2. *Ree v. Pritchard*, 7. C. & P. 303.

A person, deaf and dumb, was to be tried for a misdemeanor. A jury was impanelled to try whether he was mute by the visitation of God, and on their finding that he was so, they were sworn to try if he was of sound mind, and on their finding that he was so, his counsel pleaded not guilty for him, and the trial proceeded in the usual manner, and the evidence was not interpreted to the prisoner. *Reg. v. Whitfield*, 3 C. & K. 121.

A prisoner when called upon to plead to an indictment, stood mute. A jury was impanelled and sworn to try whether he was mute of malice or by the visitation of God. A verdict of mute of malice having been returned, the court ordered a plea of not guilty to be entered on the record. *Reg. v. Schleiter*, 10 Cox, C. C. 409.

Declining to Plead.—A prisoner declining to plead to an indictment, the court directed a plea of not guilty to be entered. *Reg. v. Bernard*, 1 F. & F. 240.

When Objection should be Taken that Prisoner not fit to be Tried.—A prisoner being arraigned on two indictments for murder, and having, with apparent intelligence, pleaded to one and declined to plead to the other, the plea of not guilty was entered for him by statute with the assent of his counsel. The case being then opened, and the first witness examined, and it being then set up by his counsel that he was insane, or not in a fit state to be tried:—Held, that the proper time for making that suggestion was before the prisoner pleaded; and, had it so been made, a jury should have been impanelled to try the question, whether he was sane and in a fit state to be tried, but as the trial had been begun, and it would be manifestly inconvenient to recommence the trial of the collateral issue, and as, moreover, the evidence as to the prisoner's present sanity was very much mixed up with the general question of his sanity, it was open to the court, under 39 & 40 Geo. 3, c. 94, to take the whole of the evidence, and then leave to the jury both questions as to his state of mind at the time of the act and at the time of the trial. *Reg. v. Southey*, 4 F. & F. 864.

3. POSTPONING OR ADJOURNING TRIAL.

Statute.—By 14 & 15 Vict. c. 100, s. 27, no person prosecuted shall be entitled to traverse or

postpone the trial of any indictment against him at any session of the peace, session of oyer and terminer or session of gaol delivery: provided always, that if the court, upon the application of the person so indicted or otherwise, shall be of opinion that he ought to be allowed a further time, either to prepare for his defence or otherwise, such court may adjourn the trial of such person to the next subsequent session, upon such terms as to bail or otherwise as to such court shall seem meet, and may respite the recognizances of the prosecutor and witnesses accordingly, in which case the prosecutor and witnesses shall be bound to attend to prosecute and give evidence at such subsequent session without entering into any fresh recognizance for that purpose.

Postponement—Application, when made.]—A motion to put off a trial, on an indictment for felony, cannot be entertained till after plea pleaded. *Reg. v. Bolam*, 2 M. & Rob. 192.

Postponing—Absence of material Witness.]—A prisoner's counsel moved to postpone a trial for murder, on an affidavit which stated that one of the witnesses for the prosecution, who had been bound over to appear at the assizes, was absent, and that on cross-examination that witness could give material evidence for the prisoner:—Held, that this was sufficient ground for postponing the trial, without shewing that any endeavour had been made on the part of the prisoner to procure the witness's attendance, as the prisoner might necessarily expect, from his having been bound over, that he would appear. *Reg. v. McCarthy*, Car. & M. 625.

An issue upon the identity of a person is to be tried instantan. *Rex v. Rogers*, 3 Burr. 1809.

—Not Examined before Magistrate.]—If it is moved, on the part of the prosecution in a felony, to put off the trial, on the ground of the absence of a material witness, who has not made a deposition before the committing magistrate, the judge will require an affidavit stating what points the witness is expected to prove, in order that he may form a judgment as to the witness being material or not. *Reg. v. Savage*, 1 C. & K. 75.

A trial for murder was put off until the next assizes, upon an application on the part of the prosecution, on the ground of the inability of a material witness to attend, although the witness was not examined before the magistrates, there being an affidavit of a medical man as to an injury to the witness, rendering it, in his opinion, unsafe that he should travel, and this even after the trial had been appointed for a particular day. *Reg. v. Lawrence*, 4 F. & F. 901.

What Evidence sufficient that Witness cannot attend.]—Where it was stated by the grand jury on their returning a true bill for murder, that an important witness was too ill to give evidence in court, the jury directed two surgeons to see the witness; and on their stating on the voir dire that the witness was too ill to give evidence in court, the judge ordered the trial to be postponed to the next assizes, and the prisoner to be detained in custody. *Reg. v. Chapman*, 8 C. & P. 538.

An affidavit of a surgeon, that a witness is the mother of an unweaned child, which is afflicted

with inflammation of the lungs, and that the child could neither be brought to the assize town nor separated from its mother without danger to its life, is sufficient ground for the absence of the witness, in order to found a motion to postpone the trial. *Reg. v. Savage*, 1 C. & K. 75.

Effect of Postponement on Prisoner.]—Before the spring assizes, 1840, A. was committed to take his trial at those assizes for shooting B. The trial was postponed to the summer assizes, on the ground that B. was too ill from his wounds to be able to attend to give evidence. Before the summer assizes B. died, and at those assizes a true bill for the murder of B. was found against A., and application was made, on the part of the prosecution, to postpone the trial to the next spring assizes, on the ground of the illness of a material witness. The judge granted the application, and held, that A. was not entitled to his discharge under the 7th section of the Habeas Corpus Act. *Reg. v. Bowen*, 9 C. & P. 509.

If it is moved on the part of the prosecution in a case of felony to postpone the trial on the ground of the absence of a material witness, the practice, where the absence of the witness can be traced to the acts of the prisoner or his friends, is not to discharge the prisoner from custody, except on very sufficient bail; but where no collusion appears between the absent witness and the prisoner, or his friends, the practice is to discharge the prisoner on his own recognizance. *Rex v. Beardmore*, 7 C. & P. 497.

Where a trial for felony is postponed, on the application of the counsel for the prosecution, on the ground of the absence of a material witness, it is in the discretion of the judge, whether, on consideration of the circumstances of each particular case, he will order the prisoner to be detained till the next assizes, or admit him to bail, or discharge him on his own recognizance. *Rex v. Osborn*, 7 C. & P. 799.

Prisoner unable through Extreme Poverty to Procure Attendance of Witnesses.]—The court will postpone until the next assizes the trial of a prisoner charged with murder, on an affidavit by his mother that she would be enabled to prove by several witnesses that he was of unsound mind, and that she and her family were in extreme poverty, and had been unable to procure the means to produce such witnesses, and that she had reason to believe that if time were given to her the requisite funds would be provided. *Reg. v. Langhurst*, 10 Cox, C. C. 353; 4 F. & F. 969.

—Affidavit.]—The affidavit of the prisoner's attorney, setting forth the information he had received from the mother, was held to be insufficient. *Ib.*

Danger to Public from Infection.]—A case was postponed on the ground that infection might be conveyed to the public by the attendance of the witnesses. *Reg. v. Taylor*, 15 Cox, C. C. 8.

Arrest of Defendant.]—A defendant in an indictment for perjury, tried at the sittings in the Queen's Bench, was arrested on the Wednesday before the trial, as he was going to the chambers

of his counsel to deliver his brief. The case was called on for trial on the Saturday, and the judge would not postpone it unless it could be shewn that the arrest was by collusion with the prosecutor; and the fact that a witness for the prosecution stood by while the arrest took place is not sufficient to raise that inference. *Reg. v. Gordon*, Car. & M. 410.

To give Opportunity of sifting Character and Evidence of Witnesses.—An application to postpone the trial of a prisoner charged with murder, in order to afford an opportunity of investigating the evidence and characters of certain witnesses, who had not been examined before the committing magistrate, but who were to be called for the prosecution to prove previous attempts by the accused on the life of the deceased, was refused. *Reg. v. Johnson*, 2 C. & K. 354.

That other Charges may be Brought against Prisoner.—Upon a charge of murder by poison, the presentment of a bill to the grand jury cannot be postponed to the next assizes, on the ground that other and like charges may before that time be brought against the prisoner, and if no bill of indictment is so presented, he is entitled to be discharged. *Reg. v. Ileson*, 14 Cox, C. C. 40.

Principal Witness Incompetent to take Oath.]

—A judge at assizes may postpone a trial until the next assizes, if he finds the principal witness wholly incompetent to take an oath from ignorance; and may order the witness to be instructed in the meantime by a clergyman in the principles of his duty, and the nature and obligation of an oath. *Reg. v. White*, 1 Leach, C. C. 430.

Where a bill for rape on a child under the age of ten has been ignored by the grand jury, in consequence of the judge refusing to allow the child to be sworn as a witness, on the ground of her want of knowledge of the obligation of an oath, the prisoner was ordered to be detained in custody until the child could be properly instructed. *Reg. v. Baylis*, 4 Cox, C. C. 23.

In a case of carnally knowing and abusing a girl under ten years old, it appeared on an application on the part of the prosecution to postpone the trial, that the girl was only six years old, and by reason of her age, incapable of taking an oath:—Held, that the trial ought not to be postponed in order that the child might be instructed as to the nature of an oath; but that there might be cases of children of more matured intellect, e.g., of ten or twelve years old, who might be from neglected education incapable of being sworn, in which such a postponement might be proper. *Reg. v. Nicholas*, 2 C. & K. 246; *S. P.*, *Reg. v. Williams*, 7 C. & P. 320.

Prejudice preventing Fair Trial.—It is a good ground for putting off a trial, that the jury panels at the assizes have been taken from a neighbourhood where an excitement has been raised against the prisoner likely to prevent a fair trial. *Reg. v. Bolam*, 2 M. & Rob. 192.

Pending Examination of Witnesses abroad.—A defendant indicted for misdemeanors committed by him in the West Indies in a public capacity, under 42 Geo. 3, c. 85, is not entitled, upon an affidavit in the common form for putting off a trial upon the absence of a material witness,

to put off his trial till return made to writs of mandamus to the courts abroad, to examine witnesses, which are directed to be issued in such cases at the discretion of the court; but he must lay before the court such special grounds by affidavit, as may reasonably induce them to think that the witnesses sought to be examined are material to his defence. But the prosecutor in such case is of course entitled to writs of mandamus for the like purpose. *Ree v. Jones*, 8 East, 31.

Expenses of Prosecution on Postponement of Trial.—Upon the postponement of a trial for the recovery of a witness who is ill, the prosecutor may then be allowed the costs of the prosecution incurred up to the date of the postponement. *Reg. v. Wilson*, 12 Cox, C. C. 622.

Adjourning.—The judge in a case of felony has no authority to order an adjournment (i. e. to another day) on account of the mere absence of the prosecutor and his witnesses. *Reg. v. Parr*, 2 F. & F. 861.

Or to adjourn a criminal trial when once the jury is sworn. *Reg. v. Tempest*, 1 F. & F. 381.

But a prisoner's trial may be adjourned if the case has only been opened by counsel for the prosecution, but not after evidence has been called. *Reg. v. Robson*, 4 F. & F. 360.

4. PLEAS.

a. Pleas in Abatement.

Statute.—The 7 Geo. 4, c. 64, s. 19, for preventing abuses from dilatory pleas, enacts, that no indictment or information shall be abated by reason of any dilatory plea of misnomer, or of want of addition, or of wrong addition of the party offering such plea, if the court shall be satisfied by affidavit or otherwise of the truth of such plea; but in such case the court shall forthwith cause the indictment or information to be amended according to the truth, and shall call upon such party to plead thereto, and shall proceed as if no such dilatory plea had been pleaded.

How Pleaded.—A plea in abatement is a dilatory plea, and must be pleaded with strict exactness. *O'Connell v. Reg.* (in error), 11 C. & F. 155; 9 Jur. 25.

Amendment of.—The court will not allow a defective plea in abatement, to an indictment for a misdemeanor, to be amended. *Reg. v. Cooke*, 4 D. & R. 592; 2 B. & C. 871.

Misnomer.—Before this enactment, one indicted for a misdemeanor might plead in abatement a misnomer of his surname—Shakespeare for Shakespeare, which need not be taken for idem sonans; and the plea concluding with praying judgment of the indictment, that he might not be compelled to answer the same, was good. *Reg. v. Shakespeare*, 10 East, 83.

Where a defendant was indicted with an alias dictus, and pleaded in abatement that he was not known by such name, the plea must have been demurred to, or issue taken thereon; and it could not be quashed on motion. *Reg. v. Clark*, alias *Jones*, 1 D. & R. 43; *S. P.*, *Reg. v. Cooke*, 4 D. & R. 114; 2 B. & C. 618.

Peer.]—Where a defendant pleaded in abatement to an indictment for a misdemeanor, that he was a peer, such plea was bad on demurrer, for not stating that he was a peer of the United Kingdom, and shewing in what manner he derived his title. *Reg. v. Cooke*, 4 D. & R. 592; 2 B. & C. 871.

Affidavit.]—A dilatory plea to an indictment was set aside for want of an affidavit to verify it. *Reg. v. Grainger*, 3 Burr. 1617; *S. P., Reg. v. Duffy*, 9 L. R. 163.

Pleading Over.]—A defendant in an indictment for a misdemeanor cannot plead over to the charge, after a plea in abatement for a misdemeanor, on which issue was taken and found against him. *Reg. v. Gibson*, 8 East, 107. See *Reg. v. Phelps*, Car. & M. 180.

Judgment on.]—Although the prosecutor having demurred to a plea in abatement concluded in bar, praying final judgment:—Held, that the court was not precluded thereby, but was bound to give that judgment which was right on the whole record. *Reg. v. Mitchell*, 3 Cox, C. C. 94.

Where a replication to a plea in abatement introduces new matter, upon which issue may be taken, the prosecutor is entitled to pray final judgment. *Id.*

b. Special Pleas.

In addition to Not Guilty.]—In criminal cases a defendant cannot plead a special plea in addition to not guilty. *Reg. v. Strahan*, 7 Cox, C. C. 85; *S. P., Reg. v. Sheen*, 8 Cox, C. C. 143; *Bell*, C. C. 97; 28 L. J., M. C. 91; 5 Jur., N. S. 151; 7 W. R. 255.

c. Withdrawing Plea.

Discretion of Judge.]—It is purely for the discretion of the judge at the trial, whether a plea of not guilty may be withdrawn or not; and the exercise of such discretion cannot be reviewed upon a case reserved. *Reg. v. Brown*, 17 L. J., M. C. 145.

Trial in Queen's Bench.]—Where an indictment has been removed and sent down to trial as a Queen's Bench record, the defendant cannot withdraw his plea of not guilty and plead guilty. *Reg. v. Barrett*, 2 Lewin, C. C. 264.

Retracting Plea of Guilty.]—A prisoner who has pleaded guilty to a charge of larceny, and upon whom sentence has been passed, cannot be allowed to retract his plea and plead not guilty. *Reg. v. Selbe*, 9 C. & P. 346.

On the trial of an indictment for forgery against two, one of them, after the opening speech for the prosecution, asked to be allowed to withdraw his plea of not guilty and to plead guilty. This was done, and the plea of guilty was recorded. He was then examined as a witness for the prosecution against the other, and swore that he had no knowledge of the instrument being forged. Upon this he was allowed to withdraw his plea of guilty and to plead not guilty, the jury withdrawing their verdict. The trial of the other party was then proceeded with, and, on his acquittal, the one who had

withdrawn his plea was put upon his trial. *Reg. v. Cloutier*, 8 Cox, C. C. 237.

d. Autrefois Acquit and Autrefois Convict.

i. Validity.

Statute.]—By 14 & 15 Vict. c. 100, s. 28, *on any plea of autrefois convict or autrefois acquit, it shall be sufficient for any defendant to state that he has been lawfully convicted or acquitted, as the case may be, of the said offence charged in the indictment.*

Judgment Reversed in Error.]—A plea of autrefois convict or acquit, which shews that the judgment on the former indictment has been reversed for error in the judgment, is not a good bar to a subsequent indictment for the same offence. *Reg. v. Drury*, 3 C. & K. 193; 18 L. J., M. C. 189.

A judgment reversed is the same as no judgment; and upon a record without any judgment no punishment can be inflicted. *Id.*

Defect in Record.]—Where, by reason of some defect in the record, either in the indictment, place of trial, process or the like, a prisoner has not been lawfully liable to suffer judgment for the offence charged, he has not been in jeopardy in the same, which entitles him to plead the former proceeding, in bar to a subsequent indictment. *Id.*

A prisoner is lawfully liable to suffer punishment on an erroneous record, until it is reversed in a court of error. *Id.*

A judgment on demurrer in felony, on the ground that the indictment does not sufficiently charge a felony, is no bar to a subsequent good indictment for the same felony. *Reg. v. Richmond*, 1 C. & K. 240.

Prisoner put in Peril—Whether before Magistrate or Jury.]—The defence of autrefois convict is a common law defence available in every case where a man is put in peril more than once for the same act, whether the charges are made before magistrates or tried before a jury. *Wemyss v. Hopkins*, 10 L. R., Q. B. 378; 44 L. J., M. C. 101; 33 L. T. 9; 23 W. R. 691.

Evidence which might have been Adduced at first Trial.]—If the prisoner could have been legally convicted on the first indictment upon any evidence that might have been adduced, his acquittal on that indictment may be successfully pleaded to a second indictment; and it is immaterial whether the proper evidence was adduced at the trial of the first indictment or not. *Reg. v. Sheen*, 2 C. & P. 635.

Facts sustaining first Indictment.]—A plea of autrefois acquit cannot be pleaded unless the facts charged in the second indictment would, if true, have sustained the first. *Reg. v. Vandercomb*, 2 East, P. C. 519; 2 Leach, C. C. 708.

Burglary—Felony committed—Intent to commit Felony.]—A plea of autrefois acquit of a burglary, where the felony is laid as actually committed, cannot be pleaded to an indictment for the same burglary laid with intent to commit the felony, for they are two distinct and different offences. *Id.*

Murder—Burglary with Violence.]—If a party charged with the crime of murder, committed in the perpetration of a burglary, is generally acquitted on that indictment, he cannot afterwards be convicted of the burglary with violence, as the general acquittal on the charge of murder would be an answer to that part of the indictment containing the allegation of violence. *Reg. v. Gould*, 9 C. & P. 364.

Manslaughter—Murder.]—A man was tried for manslaughter, and found guilty and sentenced. Shortly after his trial the coroner's jury returned an inquisition for wilful murder upon the same facts. At the next assizes he was arraigned upon such inquisition, when he pleaded *autrefois* convict. The facts of identity of the prisoner and deceased having been given in evidence, and the judge having read the depositions, which, as he thought, disclosed a case of manslaughter, he held the plea to be proved, at the same time stating that if he thought the case would ultimately have resolved itself into one of murder, he should have tried the prisoner, and if necessary, reserved the point. *Reg. v. Tancock*, 13 Cox, C. C. 217; 34 L. T. 455.

Murder—Poisoning with Intent to Murder.]—Upon an indictment under 7 Will. 4 & 1 Vict. c. 85, ss. 3, 4, for administering poison with intent to murder, a previous acquittal on an indictment for murder founded on the same facts could not be pleaded in bar. *Reg. v. Connell*, 6 Cox, C. C. 178.

Murder by Administering Noxious Thing.]—A first count for murdering a male bastard child, stated that the prisoner gave and administered a large quantity of oil of vitriol, and forced the child to take into his mouth and throat a large quantity of the said oil of vitriol, the prisoner knowing that the said oil of vitriol would occasion the death of the child, whereby he became disordered in his mouth and throat, and by the disorder, choking, suffocating, and strangling occasioned thereby, languished and died. The second count was for murdering the child, by administering a certain acid called oil of vitriol, and forcing the child to take a large quantity of the said acid into his mouth and throat, by means whereof he became injured and disordered in his mouth and throat, and incapable of swallowing his food, and died of the inflammation, injury, and disorder occasioned thereby. A plea, that the prisoner had been acquitted for murdering a base infant male child, by giving and administering a certain deadly poison, to wit, oil of vitriol, and by forcing the child to take, drink, and swallow down a large quantity of the said oil of vitriol, the prisoner knowing it to be a deadly poison, whereby the child became sick and distempered in his body, and, by the sickness and distemper occasioned thereby, languished and died, is a good bar to the indictment. *Reg. v. Clark*, 1 B. & B. 473.

Assault—Murder.]—A person was acquitted of an assault with intent to murder, but was convicted of an assault with intent to do grievous bodily harm, and the prosecutor having subsequently died, he was indicted for murder:—Held, that he was properly indicted. *Reg. v. Salvi*, 10 Cox, C. C. 481, n.

Murder—Assault.]—Two were indicted for having, on the 10th November, 1849, assaulted P. They pleaded *autrefois* acquit, and in their plea set out an indictment for murder, the third count of which alleged that they had murdered the deceased, by beatings on 5th November and 1st December, 1849, and 1st January, 1850, and on divers other days between the 5th November and 1st January; and the plea averred that the assaults charged in the second indictment were identically the same as those of which they had been acquitted on the trial of the first. The replication was, that the prisoners were not acquitted of the felony and murder, including the same identical assaults charged in the indictment. On the first trial the counsel for the crown had stated the assaults as conducing to the death, and had given them in evidence to sustain the charge of murder. It was proved, however, that the cause of death was a blow inflicted shortly before the death of the deceased, which occurred on the 4th of January, but there was no evidence to shew by whom the blow was struck; and the prisoners were acquitted. The judge, on the second trial, told the jury, that if they were satisfied that there were several distinct and independent assaults, some or any of which did not in any way conduce to the death of the deceased, it would be their duty to find the prisoners guilty. The jury found the prisoners guilty:—Held, that the conviction was right, as the prisoners could not, on the trial for murder, have been convicted, under 7 Will. 4 & 1 Vict. c. 85, s. 11, of the assaults for which they were indicted on the second trial. *Reg. v. Bird*, T. & M. 437; 2 Den. C. C. 94; 5 Cox, C. C. 11; 20 L. J., M. C. 70; 15 Jur. 193.

Assault—Felonious Stabbing.]—A plea of *autrefois* convict of an assault before justices, under 9 Geo. 4, c. 31, s. 27, is a bar to an indictment for feloniously stabbing in the same transaction. *Reg. v. Walker*, 2 M. & Rob. 446.

Assault—Manslaughter.]—But a previous summary conviction for an assault under 24 & 25 Vict. c. 100, s. 43, is not a bar to an indictment for manslaughter of the party assaulted, founded upon the same facts. *Reg. v. Morris*, 1 L. R., C. C. 90; 36 L. J., M. C. 84; 10 Cox, C. C. 480.

Rape—Assault with Intent to commit Rape.]—An acquittal on an indictment for rape could not be successfully pleaded to a subsequent indictment for an assault with intent to commit a rape, nor could an acquittal on an indictment for feloniously stabbing, with intent to do grievous bodily harm, be successfully pleaded to an indictment for an assault, though, in each case, the transaction was the same, and the accused might have been convicted of an assault under 7 Will. 4 & 1 Vict. c. 85, s. 11. *Reg. v. Gisson*, 2 C. & K. 781.

Perjury—Same Affidavit.]—One was indicted in Middlesex for perjury committed in an affidavit, which indictment, after setting out so much of the affidavit as contained the false oath, concluded with a prout patet by the affidavit filed in the Court of King's Bench, and on this he was acquitted; after which he was indicted again in Middlesex for the same perjury, with this difference only, that the second indictment

set out the jurat of the affidavit, in which it was stated to have been sworn in London; which was traversed by an averment that in fact the defendant was so sworn in Middlesex, and not in London.—Held, that he was entitled to plead autrefois acquit, for the jurat was not conclusive as to the place of swearing; and the same evidence as to the real place of swearing the affidavit might have been given under the first as under the second indictment, and therefore the defendant had been once before put in jeopardy for the same offence. *Reg. v. Emden*, 9 East, 437.

Indictment for Felony—Acquittal—Subsequent Indictment for Misdemeanor upon same Facts.]—By 24 & 25 Vict. c. 97, s. 35, and 24 & 25 Vict. c. 100, it is enacted that any person who unlawfully and maliciously throws upon or across any railway any wood, stone, or other matter with intent to endanger the safety of any passenger travelling or being upon such railway, or with intent to obstruct or injure any engine, shall be guilty of felony, and being convicted thereof shall be liable to penal servitude for life, or to be imprisoned for any time not exceeding two years.—Held, that an acquittal upon an indictment charging the prisoner with a felony was no bar to a subsequent indictment being preferred upon the same facts for a misdemeanor under the provisions of the above statutes. *Reg. v. Gilmore*, 15 Cox, C. C. 85.

Larceny—Property of A. or B.]—The prisoner stole the goods of J. B. from his stall, which at the time was in the charge of R. B. his son, a child of fourteen, who lived with his father, and worked for him. The first indictment against him for stealing the goods described them as the property of R. B. The sessions thinking this a wrong description directed an acquittal, and caused a new bill to be sent up laying the property in J. B. To this indictment he pleaded autrefois acquit.—Held, that the plea could not be sustained, for the prisoner could not, on the evidence, have been convicted on the first indictment, charging the property as that of R. B., and that the court could only look at the first indictment as it stood, without considering whether the allegation as to the ownership of the goods might not have been amended so as to have warranted a conviction. *Reg. v. Green, Dears. & B. C. C. 113*; 7 Cox, C. C. 186; 26 L. J., M. C. 17; 2 Jur., N. S. 1146.

Larceny at Common Law and under Statute.]—In one indictment the prisoners were charged with larceny at common law, and for feloniously receiving "the goods aforesaid." They were acquitted on the ground that the alleged goods were a fixture in a building. They were then charged upon a second indictment under the 24 & 25 Vict. c. 96, s. 31, for stealing the fixture, to which charge they pleaded autrefois acquit. The presiding chairman at sessions held that plea not to be proved, and the prisoners then pleaded not guilty, but were convicted.—Held, that the ruling of the chairman was right, and that the prisoners had not been in peril on the count for receiving in the first indictment. *Reg. v. O'Brien*, 15 Cox, C. C. 29; 46 L. T. 177.

Principal—Accessory before Fact.]—A person who is tried for felony as a principal, and acquitted, cannot plead that acquittal in bar of

another indictment, which charges him with being an accessory before the fact to the same felony. *Reg. v. Plant*, 7 C. & P. 575.

Joint Indictment—Single Indictment.]—Plea by one prisoner, indicted singly for receiving stolen goods, of autrefois acquit, under an indictment against him and four others, on which one was convicted, and the prisoner and the three others were acquitted, is good. *Reg. v. Dann*, 1 M. C. C. 424.

Evidence shewing former Indictment incorrect.]—Indictment that the defendant, in the reign of the present king, kept a common gaming-house; plea, that the defendant, in the reign of the present king, was acquitted upon an indictment for keeping a common gaming-house in the reign of the late king, against the peace of our said lord the king; and averring the identity of the offences: demurrer, concluding with a prayer of judgment of respondent ouster.—Held, first, that the plea was bad, because the indictment on which the acquittal was founded charged an offence committed in the reign of the late king, and the defendant could not by averment shew that the offence charged in both indictments was the same; and secondly, that the judgment on demurrer was final, although the demurrer concluded with a prayer of judgment of respondent ouster. *Reg. v. Taylor*, 5 D. & R. 422; 3 B. & C. 502.

Verdict of Guilty—Second Indictment by Order of Judge.]—A first count charged the prisoners with having in their possession a mould intended to impress the stamp of the reverse side of a shilling; the second stated, that the mould was intended to impress the obverse side; the third stated that it was intended to impress part or parts of the reverse side; and the fourth stated the same as to the obverse side. A verdict of guilty having been recorded, a motion was made in arrest of judgment, on the ground that the two last counts were bad for uncertainty, whereupon the judge directed another indictment to be preferred. The second indictment contained the first two counts of the previous one; a third and fourth stated, that the mould was intended to impress parts of the obverse and parts of the reverse sides; a fifth and sixth used the word "part" instead of parts. The prisoner pleaded autrefois convict. The twelve judges decided that the plea was bad, and confirmed the second conviction. *Reg. v. Phillips*, 1 Jur. 427.

Second Indictment should have been Included in first.]—A prisoner was tried, on the 6th of April, 1863, upon an indictment charging him with having, on the 22nd of January, 1863, stolen 25lbs. of copper, the property of A., and was acquitted. He was again tried on the 29th of June, 1863, upon an indictment which charged him, in a first count, with having, on the 20th September, 1862, stolen a riddle, the property of A., and in the second count, with having, on the 16th of January, 1863, stolen five shovels, also the property of A. The prisoner had been in A.'s employ several years, and the riddle and shovels were found in his possession on the 21st of January, 1863, but there was no evidence to shew when they were stolen.—Held, first, that he was not entitled to be acquitted upon the

second trial on the ground that the charge of stealing the riddle and shovels ought to have been included in the first indictment, and that on these facts a verdict was rightly found against him upon a plea of *autrefois acquit*. *Reg. v. Knight*, L. & C. 378; 9 Cox. C. C. 437; 9 L. T. 808.

Plea—Duplicity—Two Acquittals.—If, in a plea of *autrefois acquit*, the prisoner was to insist on two distinct records of acquittal, his plea would be bad for duplicity. *Reg. v. Sheen*, 2 C. & P. 635.

Discharge of Jury by Judge—How Pleaded.—On the trial of an information for a misdemeanor the judge discharged the jury. The defendant then put a plea on the record, setting out the facts under which the jury was discharged, in the nature of a plea *autrefois acquit*:—Held, that this matter could not be raised by way of plea, but must be raised by way of error on the record after conviction. *Reg. v. Charlesworth*, 4 L. T. 638; 5 L. T. 150; 9 W. R. 805.

ii. *Practice.*

Not Guilty.—A prisoner may plead not guilty, after his special plea of *autrefois acquit* is found against him. *Reg. v. Welch*, Car. C. L. 56.

Informal mode of Pleading.—The court will not reject a plea of *autrefois convict* on account of the informal manner in which it is handed in by the prisoner, but will assign counsel to put it into a formal shape, and postpone the trial, to give time for its preparation. *Reg. v. Chamberlain*, 6 C. & P. 93.

Jury Charged—Two Issues.—The jury cannot be charged at the same time to try the two issues of *autrefois acquit* and not guilty. *Reg. v. Roche*, 1 Leach, C. C. 134.

Right to Begin.—Four persons were tried for a rape, upon an indictment containing counts charging each as principal, and the others as aiders and abettors. They were acquitted; and it being proposed on the following day to try three of them for another rape upon the same person (the second indictment being exactly the same as the first, with the omission only of the fourth prisoner), they pleaded *autrefois acquit* to the second indictment, averring the identity of the offences. To this plea there was a replication that the offences were different:—Held, that on this issue the prisoners' counsel must begin. *Reg. v. Parry*, 7 C. & P. 836.

Proof by Record.—A plea of *autrefois convict* can only be proved by the record; and the indictment, with the finding of the jury, indorsed by the proper officer, is not sufficient, although it appears that no record has been made up. But the court, before whom the prisoner is brought to be tried the second time, will postpone the trial at the request of the prisoner, on an affidavit of the fact, to give time for an application for a mandamus to compel the making up of the record. *Reg. v. Bowman*, 6 C. & P. 101.

—**Proceedings coram non iudice.**—A plea of *autrefois convict* stated that the prisoner was

indicted, convicted, and sentenced, at a session of the peace, duly holden by adjournment on the 5th of July; replication, nul tiel record. The record, produced in support of the plea, stated that the indictment was found at a session commenced and holden on Monday the 1st of July, and that the court was adjourned till Tuesday the 2nd; that the court, having re-assembled on Thursday the 4th, was adjourned to Friday the 5th, when the prisoner was tried and convicted:—Held, that the plea of *autrefois convict* was not proved by the record, inasmuch as for want of an adjournment from the Tuesday to the Thursday, the proceedings on the Friday were *coram non iudice*, and a nullity. *Reg. v. Bowman*, 6 C. & P. 337.

—**Drawing up Record.**—During the sitting under the same commission, the original indictment, and minutes of the verdict upon it, are receivable in evidence in support of a plea of *autrefois acquit*, without a record being drawn up. In order to his pleading *autrefois acquit* in a case of felony, the prisoner has not a right to a copy of the second indictment, but he has a right to have the indictment read slowly. *Reg. v. Parry*, 7 C. & P. 836.

Verdict on Issue is Final.—The prisoner's counsel put in the commitment and the former indictment, and also the minutes of the former acquittal written on the indictment. On this evidence the jury found that the offences were the same; and it being referred for the opinion of judges, whether there was any evidence to justify and support the verdict, and if not whether such verdict was final, and operated as a bar to any further proceedings by the crown—upon the second indictment:—Held, that the verdict of the jury was final, and the prisoners were discharged. *Reg. v. Parry*, 7 C. & P. 836.

A verdict for a prisoner, on an issue of *autrefois convict*, cannot be set aside, and a new trial had, though without evidence, and against the opinion of the judge. *Reg. v. Lea*, 2 M. C. C. 9.

5. RECOGNIZANCES.

a. *Entering into.*

Sufficiency of.—In considering the sufficiency of a recognizance to prosecute under the Vexatious Indictment Act, s. 1, reference may be made to the accompanying depositions to ascertain the particulars of the offence to be charged. *Reg. v. Bell*, 12 Cox, C. C. 37.

Where a party, indicted at the quarter sessions for a conspiracy, had entered into an insufficient recognizance to take his trial:—Held, that the court, on a removal by certiorari, might discharge it on motion, and compel him to enter into better securities. *Reg. v. Hooper*, 1 Chit. 491.

Amount of.—The 5 Geo. 2, c. 19, s. 3, requiring the party removing a conviction by a magistrate to enter into a recognizance, with two sureties in 50*l.*, conditioned to prosecute the writ with effect, was not complied with by the party and his two sureties entering into a recognizance in 25*l.* each, but it must be in the entire sum of 50*l.* *Reg. v. Dunn*, 8 T. R. 217.

Sheriff Arresting Persons.—A sheriff has no

authority to take a bond for the appearance of persons arrested by him, under process issuing upon an indictment at the quarter sessions for a misdemeanor; he can only take a recognizance for their appearance. *Bengough v. Rossiter*, 4 T. R. 505; 2 H. Bl. 418, 426.

Enlarging — In what Cases.]—Where a prisoner has made default, the recognizance of the prosecutor may be enlarged till the apprehension of the prisoner. *Young, In re*; 2 Cox, C. C. 280.

Where an indictment for felony was found at the Central Criminal Court against a peer of the realm and several commoners, at a time while the houses of parliament were not sitting, the recognizances of the commoners were respited from session to session, until after the case of the peer had been disposed of in the House of Lords. *Reg. v. Douglas*, Car. & M. 193.

A judge sitting at nisi prius, acting under 14 & 15 Vict. c. 100, s. 19, compelled the defendant in a cause to enter into recognizances to appear and take his trial for perjury at the next sessions of the Central Criminal Court, and bound the plaintiff in recognizances to prosecute:—Held, that the court of Exchequer had no power to enlarge those recognizances to a subsequent sessions of the Central Criminal Court. *Horridge v. Hawkins*, 15 Jur. 1086.

— Jurisdiction of Quarter Sessions.]—Indictment for misdemeanor at the quarter sessions. The defendant pleaded guilty, and was bound by recognizances to appear for judgment at the next quarter sessions, and judgment was respited. At the next April sessions judgment was further respited until the June sessions, when judgment was given, and the defendant sentenced to be fined and imprisoned. On error brought:—Held, that a court of quarter sessions has power to respite cases from one sessions to another. *Keen v. Reg. (in error)*, 3 New Sess. Cas. 25; 2 Cox, C. C. 341; 10 Q. B. 928; 16 L. J., M. C. 180; 11 Jur. 1060.

The record stated, that at the first session "it was considered and adjudged that the defendant should enter into recognizances to appear:"—Held, that these words did not give the order the effect of a judgment, so as to oust the sessions of their jurisdiction to give judgment at the subsequent sessions. *Id.*

Who can enter into.]—A person of the age of sixteen is competent to enter into a recognizance conditioned to prosecute on a criminal charge. *Williams, Ex parte*, McClell. 493; 13 Price, 673.

By a local act, commissioners were enabled to rate every person or persons who occupied land in the parish:—Held, that a corporation was liable to be rated, although by a clause, giving an appeal to the sessions to any party aggrieved, such party was bound to enter into a recognizance. *Cortis v. Kent Waterworks Company*, 7 B. & C. 314.

— Indictment against Corporation—Certiorari.]—An indictment against a corporation, found at quarter sessions, may be removed by certiorari, at the instance of the prosecutor, without his entering into the recognizance required by 16 & 17 Vict. c. 30, s. 5. *Reg. v. Manchester (Mayor, &c.)*, 7 El. & Bl. 453; 26 L. J., M. C. 65; 3 Jur., N. S. 839.

Within what Time.]—Where a statute requires that a recognizance shall be entered into forthwith, after notice of appeal, it means within a reasonable time; and, therefore, a period of nine days without cause assigned for the delay is too long. *Reg. v. Worcester (Justices)*, 7 D. P. C. 789.

The word forthwith in a notice to a party charged criminally, and out on bail, to appear on pain of forfeiting his recognizance, means, within a reasonable time from the service, and not from the date of the notice. *Reg. v. Price*, 8 Moore, P. C. 203.

Return setting out a conviction by two justices, under 6 Geo. 4, c. 129, whereby A. was sentenced to six weeks' imprisonment, and an order of sessions, purporting to be made on dismissing an appeal against this conviction, whereby he was ordered to be imprisoned pursuant to the conviction. By affidavits it appeared that he was convicted on a Saturday, that he entered into recognizances before the convicting justices, which were perfected on the Friday next after the conviction, that on the ensuing Monday the sessions were held, and the appeal called on. By a rule of the sessions, in all cases of appeals, not otherwise directed by law, notice in writing must be given on or before Saturday se'night preceding the sessions. Counsel appearing for the convicting justices, as respondents, and on their objection the sessions dismissed the appeal, because the rule was not complied with:—Held, that the sessions, if they thought the notice given not sufficient for a trial then, might have entered and respited the appeal, but were not justified in refusing to hear it under the circumstances. *Blues, In re*, 5 El. & Bl. 291; 24 L. J., M. C. 138; 1 Jur., N. S. 541.

Held, also, that the recognizances having been entered into with reasonable promptitude, the execution was suspended until the appeal was heard, or finally dismissed through the appellant's fault; and that, neither of these events having happened, the conviction did not afford a ground for detention. *Id.*

Where a party was convicted at a petty sessions, and sentenced to three months' imprisonment for an offence under 6 Geo. 4, c. 129, which, by s. 12, enacts that the person so convicted shall be at liberty to appeal against such conviction, and provides that the execution of such judgment so appealed against shall be suspended in case the person so convicted shall "immediately" enter into recognizances, with sureties, to prosecute such appeal:—Held, that it was not necessary that the required recognizances should be entered into at the time of the conviction, and that the prisoner is entitled to his discharge, if application is made within a reasonable time. *Reg. v. Aston*, 1 L., M. & P. 491; 4 New Sess. Cas. 283; 19 L. J., M. C. 236; 14 Jur. 1045.

Magistrates before whom entered into.]—A declaration on a scire facias, upon a recognizance to keep the peace, described the justices before whom the recognizance was taken as "Lee B. Townshend, Esq., and I. H. Harper, Esq.:"—Held, that the christian names of the justices did not appear to be insufficiently stated. *Reg. v. Dale*, 17 Q. B. 64; 20 L. J., M. C. 240; 15 Jur. 657.

In the margin of a recognizance "Middlesex" only was inserted, and the instrument was stated to have been "taken and acknowledged, the day and year above said, before me, T. B. B., a

magistrate for Surrey;" and in the body, that the defendant and his bail "came before me, T. B. B., Esq., one of her Majesty's justices of the peace in and for the county of Surrey." It was objected that the recognizance was void, because it did not shew jurisdiction:—Held, that, assuming the instrument to be of doubtful validity, the court would, notwithstanding, estreat the recognizance into the Exchequer, where the objection might be relied on. *Reg. v. Sydserff*, 2 D. & L. 564; 14 L. J., Q. B. 44; 9 Jur. 280.

No Notice of Trial necessary.—Where a defendant is under recognizances to appear and take his trial at a particular session of the Central Criminal Court, no notice of trial to the prosecutor is requisite, and he is bound to be prepared to try at that session. *Reg. v. Parker*, 3 Cox, C. C. 299. See also *Rea v. Clark*, *infra*.

b. Estreat.

Into the Exchequer.—Where a recognizance taken before a justice of the peace, upon the removal of an indictment into the Queen's Bench, had been returned and filed, the court permitted it to be estreated into the Exchequer, though it had not been inrolled. *Reg. v. Sydserff*, 2 D. & L. 564; 14 L. J., Q. B. 44; 9 Jur. 280.

Recognizances estreated into the Exchequer may be discharged or compounded by the court, according to the equity and circumstances of the case. *Pellero, In re*, 13 Price, 299; *S. C.*, nom. *Pellow, Ex parte*, M'Clel. 111.

The 3 Geo. 4, c. 46, and 4 Geo. 4, c. 37, do not oust the Court of Exchequer of its jurisdiction, where forfeited recognizances have been actually estreated into it from an inferior jurisdiction. *Id.*

For the course to be pursued in enforcing estreats into the Court of Exchequer from the King's Bench, see *Rea v. Thackle*, M'Clel. & Y. 514, 523.

No Notice of Trial given.—Where a defendant, on being taken into custody on the 8th June, under a judge's warrant issued against him on an indictment for a blasphemous libel, entered into a recognizance to appear and plead within the first eight days of the ensuing Trinity term, and to try the cause at the Middlesex sittings after that term, and pleaded not guilty, but did not give notice of trial or make up the record, either for the sittings after Trinity or Michaelmas term, nor was any rule obtained for respiting the estreating of the recognizance; and the prosecutors gave notice of trial after Trinity and Michaelmas terms, but the causes were not tried in either; but made remanets to the sittings after Hilary, and the defendant was ready to take his trial on both these occasions; and the recognizance was estreated in Hilary term, without any notice having been given to the defendant, or any motion made by the prosecutors:—Held, that the estreat was regular, and conformable to the ordinary practice. *Rea v. Clark*, 5 B. & A. 728. See also *Reg. v. Parker*, *supra*.

Practice thereon.—The condition of a recognizance returned, filed, and inrolled as of record,

cannot be varied by a rule of court. *Rea v. Bingham*, 3 Y. & J. 101.

Upon the removal of an indictment for a misdemeanor from the Central Criminal Court, by the defendants, and a conviction in the Queen's Bench, the recognizance entered into by the bail is liable to be estreated for non-payment of the costs of the prosecution, although they are not mentioned in the condition of the recognizance. *Reg. v. Hague*, 5 Jur. 1008.

Recognizances of bail taken under 5 & 6 Will. & M. c. 11, on the removal of an indictment, cannot be estreated, the defendant having agreed with the prosecutor to plead guilty and submit to a nominal fine, without the knowledge of the bail. *Rea v. Rogers*, 2 H. & W. 124.

The court has jurisdiction to respite and stay process on estreated recognizances, and they will do so on application, in order to give the cognizors an opportunity of trying a question of law respecting the subject-matter of the condition, although the forfeiture imports the breach of a duty imposed by competent authority under an act of parliament. *Fridlington, In re*, 9 Price, 658.

Where a party is in custody under process issued on an estreated recognizance, into which he alleges that he has not entered, the proper course is to come into court, and traverse the recognizance. *Stowell, Ex parte*, 1 D. & L. 995; 13 L. J., Ex. 328; 8 Jur. 740.

Where a party, bound at the quarter sessions in recognizances to keep the peace, is afterwards convicted at the petty sessions of an assault, in order to estreat the recognizances it is necessary to bring them up by certiorari, and proceed therein by scire facias. *White, In re*, 1 New Sess. Cas. 9.

When a recognizance of bail to keep the peace has been returned for the purpose of being estreated, the court will not send it back again to be amended, upon a suggestion of an error appearing on the face of it. *Higgins, Ex parte*, 2 D., N. S. 713; 7 Jur. 441.

Where a recognizance has been removed for the purpose of being estreated, the court will not grant a mandamus to the justices to correct a clerical error vitiating the recognizance. *Reg. v. Stack*, 12 L. J., M. C. 58.

Power of Sessions.—A party who had applied for a beer licence, which was refused, appealed against the refusal to the October quarter sessions, and entered into a recognizance to try the appeal, abide the judgment of the court, and pay such costs as the court might award. The appeal was dismissed, and the court ordered the appellant to pay costs to the respondent forthwith. A blank was left in the order as to the sums, which the clerk of the peace had not time to fix before the sessions adjourned. The sessions adjourned to the next November. Before the adjournment day, the clerk of the peace fixed the costs and filled up the order. After the adjourned sessions had terminated, but before the next sessions, which were held on the next January, payment was demanded of the appellant, who did not pay. On affidavit of this, the sessions holden in January estreated the recognizance:—Held, that the sessions had power to estreat the recognizance, and that process might be taken upon it under 3 Geo. 4, c. 46. *Reg. v. Ely (Justices)*, 5 El. & Bl. 489; 21 L. J., M. C. 1; 1 Jur., N. S. 1017.

Held, also, that it was not necessary that the order should direct the costs to be paid to the clerk of the peace, under 11 & 12 Vict. c. 43, s. 27. *Ib.*

If a recognizance is estreated at the quarter sessions, and a writ issues to the sheriff to levy under 3 Geo. 4, c. 46, s. 6, and the sheriff levies the amount, the court of quarter sessions has not the power to mitigate the amount, although the money has been actually levied; and the party cannot compel the sheriff to pay back the difference. *Haynes v. Hayton*, 7 B. & C. 293; 2 C. & P. 621.

When a recognizance to keep the peace, taken before two justices, was forfeited by a conviction for an assault, and the quarter sessions, on proof of the record of conviction, ordered the recognizance to be estreated:—Held, that they had no authority to make such an order, and that the proper course of proceeding was by scire facias on the recognizance. *Rea v. Yorkshire, W. R. (Justices)*, 2 N. & P. 457; 7 A. & E. 583; 2 Jur. 253.

Although an order of the court of quarter sessions to estreat a recognizance for a forfeiture out of the sessions is a nullity, yet a certiorari will be awarded to remove it in order to quash it. *Reg. v. Yorkshire (Justices)*, 2 N. & P. 457; 7 A. & E. 583.

Since 3 Geo. 4, c. 46, the Court of Exchequer has no jurisdiction over recognizances forfeited either before justices out of sessions or at the sessions. *Ib.*

Duty of Clerk of the Peace.—It is the duty of the clerk of the peace to put the law in motion to levy all recognizances forfeited at quarter sessions. *Ib.*

The duplicate of fines, issues, amercements, and forfeited recognizances, required to be delivered into the Exchequer by the clerk of the peace, under 3 Geo. 4, c. 46, s. 14, must be delivered in on oath. *Hodgson, Ex parte*, 2 Y. & J. 142.

But where the amount of estreats to be certified by clerks of the peace, town clerks, &c. to the court, is under 5*l.*, they may verify the return or certificate by affidavit without a commission or personal appearance. *Tomlinson, Ex parte*, 1 D. P. C. 303; 2 C. & J. 122; 2 Tyr. 176.

c. Forfeiture and Discharge.

Forfeiture—King a Trustee.—The king is only trustee for the party in a forfeited recognizance. *Rea v. Agres*, 4 Burr. 2118.

Award of Arbitrator.—Where A. entered into a recognizance to pay to the king a certain sum, or such sum as B. should award; and afterwards by rule of court C. was, by consent of parties, substituted as arbitrator in lieu of B., and C. made his award:—Held, that the recognizance was not forfeited by non-performance of the award of C. *Rea v. Bingham*, 3 Y. & J. 101.

When Recognizance passes to Corporation.—By a charter of Edward 4, the crown granted to a corporation "all penalties forfeited and to be forfeited, of all and every the barons, &c., in whatsoever courts the same barons, &c., should happen to be adjudged." By a charter of Car. 2, "all fines, forfeitures, &c., in the courts

aforesaid, arising, &c.," were also granted to the corporation:—Held, that under neither of these charters did a forfeited recognizance to appear to answer a charge of misdemeanor pass to the corporation. *Rea v. Dover (Mayor, &c.)*, 1 C., M. & R. 726; 5 Tyr. 279.

Discharge—When entered into per incuriam.—When two members of a corporate body entered into their recognizances to appear and plead to an indictment for non-repair of a highway, the judge ordered them to be discharged from such recognizances on the ground that they were entered into per incuriam. *Reg. v. Bury Improvement Commissioners*, 11 Cox, C. C. 641.

Impossibility of Performance.—To an action upon a recognizance or an obligation, impossibility, by act of God, of performance of the condition, is a good defence. *Leitrim (Earl) v. Steward*, 5 Ir. R., C. L. 27.

When Prosecution not willing to Proceed.—Where a prisoner has been committed for trial at the assizes, and parties bound over by a magistrate to prosecute and give evidence, the judge will not discharge the recognizances on an intimation that the attorney-general does not think it a proper case for prosecution. *Reg. v. Freakley*, 6 Cox, C. C. 75.

The court refused to discharge, without preferring a bill of indictment, the recognizances of prosecutors, being members of a society for promoting religious knowledge among the poor, who had caused a servant to be committed for embezzlement; the application being made, not on the ground of any defect in the evidence, but on the ground that the prosecutors thought that the reformation of the offender would be best promoted by such a course. *Rea v. Paul*, 6 C. & P. 323.

But where, at the assizes, parish officers were under recognizances to prosecute a pauper for obtaining money by false pretences, the judge permitted the recognizances to be discharged, the party having been in prison several weeks, and the parish being unwilling to indict. *Rea v. Adams*, 6 C. & P. 324.

Absence of Witness.—Where the trial of prisoners had been successively postponed for two assizes, in consequence of the absence of a material witness, and the affidavit on which application was made for further postponement, stated, that the witness in question was believed to have gone to India as a soldier, so that there was not any prospect of his soon return, the judge ordered the recognizances of the prosecutor to be discharged, and discharged the prisoners without compelling them to enter into any recognizances for their future appearance. *Reg. v. Bridgman*, Car. & M. 271.

Wife and Family supported by Parish.—A defendant having been committed to prison on a forfeited recognizance, his wife and family becoming burdensome to the parish, is not a sufficient ground to discharge him. *Rea v. Stancher*, 3 Price, 261.

Sessions, Jurisdiction of—Liability of Sheriff.—Where, upon a recognizance forfeited at quarter sessions, the sheriff has levied part of

the penalty, and has the defendant in execution for the residue, the sessions have jurisdiction over the whole recognizance; and if the sheriff has notice that they have discharged the defendant wholly therefrom, before the money levied had been paid over to the Treasury, an action lies against the sheriff for the amount. *Harper v. Hayton*, 5 M. & R. 307.

— **Costs.**—When an indictment had been removed by certiorari, and the defendant, being convicted, had become liable to costs, the court refused to discharge the recognizances of the bail to the certiorari until the costs were paid, although the recognizances made no mention of costs, but the court stayed the proceedings on recognizances with respect to the defendant proper *panperstatem*. *Reg. v. Thornton*, 1 L., M. & P. 192; 4 Ex. 820; 19 L. J., M. C. 113.

A recognizance to remove an indictment from the court of oyer and terminer, at Hicks's Hall, is a recognizance at common law, and not within 5 & 6 Will. & M. c. 11, s. 2, and the same may be discharged without costs. *Ree v. Fousseu*, 1 Burr. 10.

The condition of a recognizance to pay the seizing officer the costs occasioned by a claim, is broken by the non-payment to the seizing officer of the general costs of resisting the claim, though such costs are not incurred personally by the seizing officer. *Ree v. Bullock*, 1 M. & W. 726.

— **Motion.**—A motion to discharge a defendant from estreated recognizances, under 4 Geo. 3, c. 10, must be preceded by a notice to the solicitor of the Treasury. *Tipton, In re*, 3 D. P. C. 177.

In order to discharge a forfeited recognizance estreated into the Exchequer by order of a judge, the party must have the constat of the proceedings from the office of the clerk of the estreats in court; and notice of motion should be given to him and to the solicitor of the Treasury. *Ree v. Holden*, 3 Tyr. 580.

The motion to discharge a forfeited recognizance should be made on either of the days in the week when the treasurer's remembrancer is present. *Dunk, Ex parte*, 2 Tyr. 500.

Although the city of London is entitled to forfeited recognizances entered into within the city of London, yet the courts will not allow a recognizance to be discharged though the motion is made with the consent of the city solicitor, unless notice has been given to the attorney-general. *Morris, Ex parte*, 1 M. & W. 510.

— **At what Time.**—Where a defendant entered into a recognizance to appear to and try an indictment for perjury against her in Trinity Term, and she had appeared and pleaded to the indictment, but the indictment had not been tried, the court would not in Michaelmas Term discharge the recognizance, but ordered that it should not be put in suit before the last day of the term. *Ree v. Grote*, 3 D. P. C. 955.

Indemnity of Surety.—A. entered into a recognizance of bail for B. on the removal by certiorari of an indictment for conspiracy. B. was convicted, and the recognizance was estreated for nonpayment of the prosecutor's costs.—Held, that A. might maintain an action against B. as upon an implied indemnity. *Jones v. Orchard*,

16 C. B. 614; 24 L. J., M. C. 229; 1 Jur., N. S. 936.

A recognizance is not a record until it is inrolled, and, therefore, where a defendant pleaded to an action on bills of exchange, that the plaintiff was indebted to him by virtue of a recognizance taken in the court of Exchequer, which was still in force, as by the recognizance remaining in the court before the barons will appear, without stating that it was inrolled; a replication, that the plaintiff was not so indebted, concluding to the country, was held good, inasmuch as the plea did not state a debt due by recognizance, which was matter of record. *Glynn v. Thorpe*, 1 B. & A. 153.

Surety—Right of against Co-surety—Use of Recognizance.—When one of two sureties has paid the full amount of a receiver's recognizance, he is entitled to use the recognizance for the purpose of recovering, out of the estate of his co-surety, not only one-half of the sum so paid by him, but also interest thereon from the date of payment. *Swan, In re*, 4 Ir. R., Eq. 209.

— **Contribution.**—Sureties in a recognizance contribute in proportion to the amounts for which they were respectively originally bound. *Mac Douglas, In re*, 10 Ir. R., Eq. 269.

6. COMMISSIONS AND GAOL DELIVERY.

Jurisdiction.—An offence was committed within a locality which had a separate body of justices exercising jurisdiction within the liberty, by virtue of three separate commissions: first, the ordinary commission of the peace; secondly, a commission to try all treasons, misprisions of treasons, insurrections, murders, felonies, manslaughters, &c.; thirdly, a general commission of gaol delivery. Neither of the commissions contained any non-intromittent clause; but the general county magistrates, in fact, exercised no jurisdiction within the liberty, which had a gaol and separate *custos rotulorum* and clerk of the peace.—Held, that these commissions did not oust the jurisdiction of her Majesty's justices of gaol delivery for the whole county; and that the prisoner having been removed from the liberty by writs of habeas ad deliberandum and *recipias corpus*, was properly tried by such justices. *Reg. v. Crane*, 3 Cox, C. C. 53.

Power of Judge of Assize to order Indictments found at Quarter Sessions to be forwarded.—An indictment was found at the county sessions at Bedford against the defendant for obstructing a highway. Upon the certificate of such finding, he was taken before a magistrate, and bound by recognizance to appear and plead at the assizes. The indictment was not transmitted to the assizes, but was in the custody of the clerk of the peace.—Held, that the judge of assize had no power to order the clerk of the peace to send the indictment to the assizes; that, as it was found at the sessions, and not transmitted for trial at the assizes, the court had no jurisdiction to try the same. *Reg. v. Wildman*, 12 Cox, C. C. 354.

But a second indictment for the same offence being found by the grand jury at the assizes:—

Held, that the defendant being bound to appear by recognizance, must be called upon to plead to the second indictment. *Ib.*

Division into different Courts.]—Under a commission of oyer and terminer, the general court may be divided into as many courts as convenience requires; and each separate court is to be considered as held, not only before the judge actually sitting, but also constructively before all the members of the commission then acting under it. *Leveson v. Reg. (in error)*, 4 L. R., Q. B. 394; 38 L. J., M. C. 97; 20 L. T. 485.

Right of Prisoner on Bail to be Tried—Not in Custody at the Time of holding of the Assize.]—The Orders in Council, of August, 1879, made in pursuance of the Winter Assize Acts, 1876 and 1877, declare which counties are to be united for the purpose of holding a winter assize, and in each instance enact, that "Nothing in this order shall authorize the trial or require the attendance at the said winter assizes, for the said winter assize county, of any prisoner who shall have been admitted to bail, and who shall not at the time of the holding of such winter assize county be in custody":—Held, that a prisoner who had been admitted to bail, and who surrendered after the opening of the commission, was not in custody "at the time of the holding of the assizes," and could not therefore be tried. *Reg. v. Stafford*, 14 Cox, C. C. 353.

In order to entitle himself to be tried he should have surrendered before the opening of the commission. *Ib.*

Construction.]—An allegation upon a record that three judges executed a commission in relation to the trial of prisoners, to try before whom that commission was issued, is an affirmative allegation of the authority to perform that duty, and is not rendered uncertain by a subsequent statement that the commission was directed to them and others. *O'Brien v. Reg. (in error)*, 2 H. L. Cas. 465.

Discharge by Gaol Delivery.]—Prisoners triable under special commissions may be discharged by gaol delivery. *Rea v. Platt*, 1 Leach, C. C. 157, 170.

A prisoner in custody under a defective commitment may be discharged under a gaol delivery. *Ib.*

It is not imperative on a commissioner of gaol delivery to discharge all the prisoners in the gaol who were not indicted; it being discretionary in him to continue on their commitments such prisoners as appear to him committed for trial, but against whom the witnesses did not appear, having been bound over to the sessions. *Anon.*, R. & R. C. C. 173.

The judges' commission of gaol delivery applies only to untried prisoners in the gaol, and not to untried prisoners in houses of correction. *Reg. v. Arlett*, 2 C. & K. 596.

Reading over Commission.]—A special commission for the trial of a prisoner having been read in open court at the opening of the commission, immediately before the delivery of the charge to the grand jury, an application made at the arraignment by his counsel for the commission to be then read a second time, upon the ground that it had not been read in the presence

of the prisoner, was refused. *Reg. v. Bernard*, 1 F. & F. 240.

7. OTHER POINTS.

a. Bringing up Prisoner.

Person charged in Prison.]—By 30 & 31 Vict. c. 35; s. 10, *the governor of a prison is to bring up the body of any person indicted without writ of habeas corpus upon the order of a court of criminal jurisdiction for trial.*

Where a defendant is in custody in the county of A., upon an attachment issuing out of the Court of Exchequer, he may be removed to the county of B., to take his trial upon an indictment found in the latter county. *Wetton, In re*, 1 C. & J. 459.

b. Standing in the Dock.

A person who surrenders to take his trial, on a charge of felony at the assizes, must be tried at the bar of the court, and cannot take his trial at any other part of the court, even with the consent of the prosecutor. *Reg. v. St. George*, 9 C. & P. 483.

A merchant was indicted for an offence against the act of parliament prohibiting slave-trading. His counsel applied to the court to allow him to sit by him, not on the ground of his position in society, but because he was a foreigner, and several of the documents in the case were in a foreign language, and it would, therefore, be convenient for his counsel to have him by his side, that he might consult him during his trial:—Held, that the application was one which ought not to be granted. *Reg. v. Zulweta*, 1 C. & K. 215.

Where a captain in the army surrendered in discharge of his bail to take his trial, for feloniously shooting at another (in a duel) with intent to kill him:—Held, that he must take his place within the dock like all other prisoners charged with felony; but on his expressing a wish to that effect, he was allowed to have three friends to stand beside him there. *Reg. v. Douglas*, Car. & M. 193.

But a defendant who surrenders to take his trial on a charge of misdemeanor, need not stand at the bar to be tried, but may be allowed a place at the table of the court. *Reg. v. Lovett*, 9 C. & P. 462.

c. Reading Indictment.

On a trial for felony the prisoner is entitled to have the indictment read slowly over once, and once only. *Reg. v. Dowling*, 3 Cox, C. C. 509.

An indictment for perjury, removed by certiorari, came on to be tried as a nisi prius record. As soon as the jury was sworn, the defendant asked to have the indictment read at length to the court and jury. The judge directed it to be done. *Reg. v. Newton*, 1 C. & K. 469.

d. Separate Trial.

Where several prisoners are jointly indicted, the judge will not allow a separate trial on the ground that the depositions disclose statements and confessions made by one prisoner implicating another, which are calculated to prejudice the

jury, and that there is no legal evidence disclosed against the other prisoner. *Reg. v. Blackburn*, 6 Cox, C. C. 333.

Where two persons were charged with murder in the same indictment and had made statements implicating one another which were evidence for the prosecution, the court, on the application of the counsel appearing for one prisoner, allowed them to have separate trials. *Reg. v. Jackson*, 7 Cox, C. C. 357.

On an indictment of three persons jointly for publishing blasphemous libels in certain numbers of a newspaper, two of them, whose names were on it as editor and publisher, having already been convicted on a charge of publishing similar libels in another number of the paper:—Held, that the third, whose case was that he was not connected with the paper at all, had a right to be on his application tried separately, as his trial with the others might possibly prejudice him in his defence, especially as he desired to call them as witnesses, while it did not appear that his separate trial could at all embarrass the case for the prosecution, as the prosecutor would be entitled to give any evidence in his power to fix the defendant with a joint liability for the acts of the others. *Reg. v. Bradlaugh* (No. 2), 15 Cox, C. C. 217.

e. Right of Acquittal on Indictment of Several.

If several are charged with the same offence, and no evidence is given against one of them, he is entitled to an acquittal before the others are called upon for their defence, to enable them to call him as a witness. *Bounty case*, 1 East, 313, n. And see *Reg. v. Rowland*, R. & M. 401.

On an indictment against several persons, the counsel for the prosecution has a right, before opening his case, to the acquittal of any defendant he intends to call as a witness. *Reg. v. Rowland*, R. & M. 401. And see *Reg. v. Kroehl*, 2 Stark. 343; 11 East, 313, n.; *Reg. v. Owen*, 9 C. & P. 83.

f. Illness of Prisoner during Trial.

If a prisoner indicted for a felony, with whom the jury is charged, is by sudden illness during the trial rendered incapable of remaining at the bar, the jury may be discharged from the trial of that indictment, and the prisoner, on his recovery, tried by another jury. *Reg. v. Stevenson*, 2 Leach, C. C. 546.

g. Trial on a Verdict in a Civil Case.

If a verdict is found for a defendant in an action of slander; on a justification of words of felony, the plaintiff may be arraigned without a grand jury. *Cook v. Field*, 3 Esp. 133.

In an action for money received, if it appears that the defendant received the money from the plaintiff to carry to a bank, and that instead of so doing he kept it, the judge will leave it to the jury to say, whether he received it with an intent to steal it, and then feloniously converted it; and if the jury finds this in the affirmative, the judge will direct a verdict to be entered for the defendant, and that the defendant shall be tried for the felony on this finding. *Prosser v. Rowe*, 2 C. & P. 421.

h. Money and Chattels of Prisoners.

Delivery of Money before Trial.]—The court will direct money found upon a prisoner to be restored to him before trial, if it appears by the depositions that it is in no way material to the charge upon which he is to be tried. *Reg. v. Barnett*, 3 C. & P. 600.

The judge will not grant an order for the delivery to a prisoner of money found on his person: for, semble, neither a judge nor a justice of the peace has power to make such an order. *Reg. v. Pierce*, 6 Cox, C. C. 117.

Where a prisoner, a week after the commission of the offence, was apprehended on a charge of robbing A. of 25l. in notes, and 9l. in gold; and on the prisoner was found the sum of 12l. in gold, but none of it identified: the judge ordered 5l. to be restored to the prisoner, in order to enable him to make his defence. *Reg. v. Rooney*, 7 C. & P. 515.

Police taking Money from Prisoner.]—A defendant, committed to take his trial at the assizes for assaulting a constable, had 2l. 3s. 8d. taken from him by the constable who conveyed him to prison, to pay for (as was alleged) the expenses of conveying him to the prison, and his maintenance in prison till the trial, this being the ordinary practice in the county of Stafford:—Held, that the practice was quite wrong, and the judge directed the money to be restored to the defendant. *Reg. v. Bass*, 2 C. & K. 822.

A constable who apprehends a prisoner has no right to take away from him any money which he has about him, unless it is in some way connected with the offence with which he is charged; as he thereby deprives him of the means of making his defence. *Reg. v. O'Donnell*, 7 C. & P. 138; *S. P.*, *Reg. v. Kinsey*, 7 C. & P. 447; *Reg. v. Jones*, 6 C. & P. 343; *Reg. v. Burgess*, 7 C. & P. 488.

Power of Attorney.]—There is no objection to a prisoner who is under a charge of felony, executing, before his trial, a power of attorney, to obtain money from a savings' bank, for the purpose of paying his attorney for conducting his defence, or paying any other bona fide debt. *Reg. v. Cowan*, 7 C. & P. 651.

Disposal of Chattels—Order for.]—A judge has no power, either by statute or at common law, to direct the disposal of chattels in the possession of a convicted felon, not belonging to the prosecutor. *Reg. v. London (Corporation)*, El., Bl. & El. 509; 4 Jurr., N. S. 1078; 27 L. J., M. C. 231. *S. C.*, nom. *Reg. v. Pierce*, Bell, C. C. 235; 8 Cox, C. C. 344. See also *ante*, LARCENY.

i. Contempt of Court.

Service.]—Service of an order of a court of general call delivery, calling on the editor of a newspaper "to answer for contemptuously publishing the proceedings of a trial there," at the office where the newspaper was published, was good service within the 38 Geo. 3, c. 78, s. 12, and the editor not having appeared, the fine was held to be properly imposed upon him in his absence. *Reg. v. Clement*, 4 B. & A. 218.

What is.]—Exhibiting in an assize town an inflammatory publication, respecting a crime

about to be tried at the assizes, is not a contempt which the judge can interfere to stop, by committing the party exhibiting. *Reg. v. Gilham*, M. & M. 165.

j. Affidavits.

Removal from Files.]—The court will direct an affidavit in a case of misdemeanor, which contains matter both scandalous and irrelevant, to be removed from the files of the court; and the party who has filed it is liable to be visited as for a contempt of court. *Reg. v. Gregory*, 1 C. & K. 228.

If an affidavit contains matter that is irrelevant and scandalous, the court, though it cannot direct its removal from the files, will give the party attacked an opportunity of denying the defamatory matter, upon oath, by a counter affidavit. *Ib.*

k. Death of Parties.

Where two conspire and one dies, the other may still be indicted for the conspiracy. *Reg. v. Nicholls*, 13 East, 412, n.

Where one defendant in conspiracy dies between the indictment and trial, it is no ground of a venire de novo for a mis-trial, if the trial proceeds against both, no suggestion of the death being entered on the record. *Reg. v. Kendrick*, 5 Q. B. 49; D. & M. 208; 12 L. J., M. C. 135; 7 Jur. 848.

Complaint having been duly made under 20 & 21 Vict. c. 83, that obscene books were kept by the defendant in his shop for sale, a warrant for the seizure of such books was issued, and after they had been seized the defendant was summoned to shew cause why they should not be destroyed. Upon the hearing of the summons an order was made for the destruction of the books. After the issuing of the summons, but before the hearing, the complainant died, and no application to substitute another complainant was made:—Held, that the proceedings against the defendant did not lapse upon the death of the complainant, and that the order was valid. *Reg. v. Truelove*, 5 Q. B. D. 336; 49 L. J., M. C. 57; 42 L. T. 250; 28 W. R. 413; 44 J. P. 346; 14 Cox. C. C. 408.

l. The Prosecution.

Public Prosecutor.]—42 & 43 Vict. c. 22, provides for the appointment and duties of a director of public prosecutions.

In whose Name Conducted.]—A corporation must prosecute in its corporate name; and the addition of such name as a description of the persons of which the corporation is composed is not sufficient in an indictment. *Reg. v. Patriek*, 1 Leach, C. C. 253; 2 East, P. C. 1059.

A vestry was empowered, by act of parliament, to indict any person who should stop or impede rights of way in the parish, and to take such other proceedings for opening thereof as should appear expedient:—Held, that the vestry must indict in the name of the Queen, and sue in equity in name of the attorney-general, and that they could not proceed in their own name. *Bermondsey Vestry v. Brown*, 35 Beav. 226.

IV. JURIES AND CHALLENGES.

1. *Grand Jury.*
2. *Petty and Special Jury*, 714.
3. *Challenges*, 716.
4. *View*, 720.
5. *Looking-up*, 721.
6. *Discharge of*, 721.
7. *Jury Process*, 722.
8. *Questions for Jury*, 723.

Statutes.]—6 Geo. 4, c. 50; 7 & 8 Geo. 4, c. 28, s. 2; 15 & 16 Vict. c. 76, s. 105.

As to the qualification and liability of burghesses to be jurors, see 45 & 46 Vict. c. 50, s. 186.

By 6 & 7 Vict. c. 85, s. 2, *wherever in any legal proceedings any legal proceedings whatever may be set out, it shall not be necessary to specify that any particular persons who acted as jurors had made affirmation instead of oath, but it may be stated that they served as jurymen, in the same manner as if no act had passed for enabling persons to serve as jurymen without oath.*

In High Treason.]—See TREASON.

1. GRAND JURY.

Constitution—Who may Serve on.]—An Irish peer ought not to serve on a grand jury, unless he is a member of the House of Commons, he then being to all intents and purposes a commoner. *Headley (Lord)*, *In re*, R. & R. C. C. 117.

A person may serve on the grand jury although he is not a freeholder. *Anon.*, R. & R. C. C. 117.

— Number.]—A grand jury ought not to consist of more than twenty-three persons. *Reg. v. Marsh*, 1 N. & P. 187; 6 A. & E. 236; 2 H. & W. 366; 1 Jur. 38.

Where more than twenty-three persons are sworn upon a grand jury, and a bill of indictment is found by them, to which a defendant pleads, and is tried and found guilty, the court will not quash the indictment. *Ib.*

Postponing Presentment of a Bill.]—Upon a charge of murder by poison, the presentment of a bill to the grand jury cannot be postponed to the next assizes, on the ground that other and like charges may before that time be brought against the prisoner, and if no bill of indictment is so presented, he is entitled to be discharged. *Reg. v. Heeson*, 14 Cox, C. C. 40.

Finding Bill after Ignoring one against same Person.]—If the grand jury, at the assizes or sessions, has ignored a bill, they cannot find another bill against the same person for the same offence at the same assizes or sessions, and if such other bill is sent before them they should take no notice of it. *Reg. v. Humphreys*, Car. & M. 601. See contra, *Reg. v. Newton*, 2 M. & Rob. 503.

Bill found after Discharge.]—The grand jury

had come into court and had been discharged and had left the court, but had neither left the building nor separated. The judges directed them to be sent for back into court, and directed another bill of indictment (the witnesses on which were going abroad) to be sent before them. *Reg. v. Holloway*, 9 C. & P. 43.

Cannot ignore Bill on Ground of Insanity.]—A grand jury has no authority by law to ignore a bill for murder on the ground of insanity, though it appears clearly from the testimony of the witnesses, as examined by them on the part of the prosecution, that the accused was in fact insane; but if they believe that the acts, if they had been done by a person of sound mind, would have amounted to murder, it is their duty to find the bill; otherwise the court cannot order the detention of the party during the pleasure of the crown, as it can either on arraignment or trial under the 39 & 40 Geo. 3, c. 94, ss. 1 & 2. *Reg. v. Hodges*, 8 C. & P. 195.

Affidavits or Explanations, whether Receivable.]—The court will not receive an affidavit of a grand juror as to what passed in the grand jury-room, upon the subject of a bill of indictment. *Reg. v. Marsh*, 1 N. & P. 187; 6 A. & E. 236; 2 H. & W. 366; 1 Jur. 38.

The grand jury returned a bill of indictment which contained ten counts, for forging and uttering the acceptance of a bill of exchange, with an indorsement—"a true bill on both counts," and the prisoner pleaded to the whole ten counts. After the case for the prosecution had concluded, the prisoner's counsel pointed this out. The grand jury was discharged, and the judge would not allow one of the grand jurors to be called as a witness to explain their finding. *Reg. v. Cooke*, 8 C. & P. 582.

Swearing Witnesses.]—By 19 & 20 Vict. c. 54, s. 2, it shall not be necessary for any person to take an oath in open court in order to qualify himself to give evidence before a grand jury.

By s. 1, the foreman of a grand jury empanelled in England and Wales is empowered to examine, on oath or affirmation, all persons who shall appear before a grand jury to give evidence in support of any bill of indictment. The name of every witness examined, or intended so to be, shall be indorsed on the bill of indictment, and the foreman shall write his initials against the name of each witness so sworn and examined.

By s. 3, the word "foreman" is to include any member of the grand jury who may for the time being act on behalf of the foreman in the examination of witnesses.

Where the grand jury has found a bill, the judges before whom the case comes to be tried, ought not to inquire whether the witnesses were properly sworn previously to their going before the jury; and it seems that an improper mode of swearing them will not vitiate an indictment, as the grand jury is at liberty to find a bill upon their own knowledge only. *Reg. v. Russell*, Car. & M. 247.

If witnesses go before the grand jury without being sworn, and the bill is found, and the prisoner tried and convicted, it is proper to recommend him for a free pardon. *Reg. v. Dickenson*, R. & R. C. C. 401.

Swearing Jurors.]—Semble, that no objection to the caption of an indictment for an allegation that the grand jurors were sworn and affirmed, can be sustained without shewing that those who were sworn were persons who ought to have affirmed, or that those who were affirmed were persons who ought to have been sworn. *Muleahy v. Reg. (in error)*, 3 H. L. Cas. 306.

Evidence—Written Explanation.]—A grand jury cannot on a suspicion that the witness has been tampered with by the prisoner, receive in evidence his written explanation in lieu of his parol testimony for the purpose of finding a bill. *Denby's case*, 1 Leach, C. C. 514.

— **Depositions, when Admissible.]** — See *post*, DEPOSITIONS.

2. PETTY AND SPECIAL JURY.

Special Jury.]—There is no power in the court to order a special jury to be struck for the trial of a person charged with felony. *Reg. v. Mayne*, 32 W. R. 95.

Number.]—In criminal cases, twelve jurors must appear on the record. *Reg. v. St. Michael*, 2 W. Bl. 718.

A new panel of seventy-two jurors may be ordered by the judge to be summoned during the assizes, and a conviction for felony by a jury selected therefrom, after challenging, though more than forty-eight, is valid. *Reg. v. Cropper*, 2 M. C. C. 18.

Of whom Composed—In Case of Aliens.]—By 33 Vict. c. 14, s. 5, an alien shall not be entitled to be tried by a jury de medietate linguæ, but shall be triable in the same manner as if he were a natural-born subject.

— **On Removal by Certiorari.]**—An indictment, containing two counts, one alleging perjury committed in Middlesex, the other alleging perjury committed in London, was tried, upon removal by certiorari from the Central Criminal Court, before the Queen's Bench, sitting at bar:—Held, that it was no valid objection to the jurisdiction of the court that the jury was entirely from the county of Middlesex. *Reg. v. Castro*, 28 L. T. 342.

Taken Ill during Trial.]—If a jurymen is taken so ill as to be incapable of attending through the trial, another jurymen returned in the panel may be added to the eleven jurymen, but the prisoner should be offered his challenges over again as to the eleven, the eleven should be sworn de novo, and the trial begin again. *Reg. v. Edwards*, R. & R. C. C. 234; 2 Leach, C. C. 621, n.; 3 Camp. 207, n.; 4 Taunt. 309.

Where a jurymen is taken so ill as to be unable to continue, another jurymen may be sworn with the eleven jurymen already on the trial, and the witnesses already heard being recalled. *Reg. v. Beere*, 2 M. & Rob. 472. *S. P.*, *Reg. v. Sealbert*, 2 Leach, C. C. 620.

Copy of Panel.]—A prisoner indicted for felony is not entitled to a copy of the jury panel. *Reg. v. Dowling*, 3 Cox, C. C. 509.

The court will not compel the prosecutors to give a list of their names to the defendant pre-

viously to striking a special jury, but will give such directions, by consent of the prosecutors, as shall prevent prejudice accruing to the defendant in consequence of such list not being furnished. *Reg. v. Nicholson*, 8 D. P. C. 422; 4 Jur. 558.

Assent Inferred.]—In general, the assent of all the jury to the verdict pronounced by the foreman in their presence and hearing is to be conclusively inferred; and no affidavit can in any case be admitted to the contrary. *Res. v. Woolter*, 1 Stark. 111.

Exemption.]—The exemption from serving as jurymen, claimed by the members of the Barbers' Company, under the charters of 1 Edw. 4, and 5 Car. 1, and the 18 Geo. 2, c. 15, does not extend to the Central Criminal Court, but is confined to the local courts of the city, viz. those holden before the mayor, the sheriff or the coroner. *White, In re*, Car. & M. 189.

Should take Law from Judge.]—The jury should take the law from the judge; and therefore, when cases had been cited to the judge in a legal argument, and he had given an opinion on them, they were not allowed to be read to the jury in the address of the prisoner's counsel to them. *Reg. v. Parish*, 8 C. & P. 94.

Special Finding.]—In a case of felony, the judge will not direct the jury to find special facts, and the jury may, if they think proper, find a general verdict, instead of finding special facts with a view to raise a question of law. *Reg. v. Allday*, 8 C. & P. 136.

Jury of Matrons.]—If a jury of matrons wishes to have the evidence of a surgeon before they give their verdict, they should return into court, and the surgeon should be examined as a witness in open court. *Reg. v. Wycherley*, 8 C. & P. 262.

Proof of Value of Article.]—Where, in a criminal prosecution, it is essential to prove the particular value of an article, the jury may use that general knowledge which any man can bring to the subject; but if any of the jurors has a particular knowledge on the subject, arising from his being in the trade, he ought to be sworn and examined as a witness. *Res. v. Rosser*, 7 C. & P. 648.

Swearing Jurors.]—By 30 & 31 Vict. c. 35, s. 8, *a juror in any criminal proceeding refusing or being unwilling, from alleged conscientious motives, to be sworn, may be permitted, on the court being satisfied of the sincerity of the objection, to make a solemn affirmation or declaration.*

A Scotch covenanter may be sworn in as a jurymen in a court of criminal law by the ceremony of holding up his hand, without kissing the book. *Walker's case*, 1 Leach, C. C. 498.

Person Sworn by Mistake.]—Upon trial of a prisoner for murder, the name of Joseph Henry Thorne was called from the jury panel as a juror to try him, when William Thorniley, who was also upon the jury panel, by mistake answered to the name, went into the jury-box, and, not being challenged, was duly sworn; the trial proceeded, and the prisoner was con-

victed and sentenced. The mistake was not discovered till the following day:—Held, that this was not a question of law arising at the trial over which the Court of Criminal Appeal had jurisdiction. *Reg. v. Mellor, Dears. & B. C. C. 468*; 7 Cox, C. C. 454; 27 L. J., M. C. 121; 4 Jur., N. S. 214.

Held, also, that there had been no mis-trial, but quere whether the objection made would be matter of error. *Id.*

Where on the trial of an indictment for perjury, it was necessary to swear talesmen from the common jury panel, and one J. Williams being called, his son R. H. Williams (at the request of his father, and without collusion) appeared for him and was sworn and served on the jury, he not being of age, neither having a qualification, not being on the panel:—Held, that there was a mis-trial, and a rule obtained for a new trial was made absolute. *Res. v. Tremaine*, 7 D. & R. 684; 5 B. & C. 254.

A juror was summoned in error, but not returned in the panel, and in mistake was sworn to try; during the progress of the trial, these facts were discovered. The jury was discharged, and a fresh jury constituted, by taking another jurymen in the place of the one who had served in error. *Reg. v. Phillips*, 11 Cox, C. C. 142.

One Jurymen a Grand Jurymen.]—After a special jury had been sworn for the trial of a defendant for a misdemeanor, one of the jury stated that he had sat on the grand jury who found the bill. It was proposed on behalf of the prosecution that the jurymen should retire from the box, but the defendant refused to assent to that course; the trial proceeded, and the defendant was convicted. The defendant afterwards moved for a new trial on the ground of a mis-trial, but the court refused to grant him a rule. *Reg. v. Sullivan*, 1 P. & D. 96; 8 A. & E. 31; 1 W., W. & H. 610.

3. CHALLENGES.

Statute.]—By 6 Geo. 4, c. 50, s. 29, *in all inquests to be taken before the court of King's Bench, and all courts of oyer and terminer and gaol delivery, wherein the king is a party, howsoever it be, notwithstanding it be alleged by them that sue for the king, that the jurors of those inquests, or some of them, be not indifferent for the king, yet such inquests shall not remain untaken for that cause; but if they that sue for the king will challenge any of those jurors, they shall assign of their challenge a cause certain, and the truth of the same challenge shall be inquired of according to the custom of the court; and it shall be proceeded to the taking of the same inquisitions as it shall be found, if the challenges be true or not, after the discretion of the court, and no person arraigned for murder or felony shall be admitted to any peremptory challenge above the number of twenty.*

By 7 & 8 Geo. 4, c. 28, s. 3, *if any person indicted for any treason, felony, or piracy, shall challenge peremptorily a greater number of the men returned to be of the jury than such person is entitled by law so to challenge, in any of the said cases every peremptory challenge beyond the number allowed by law in any of the said cases shall be entirely void, and the trial of such person shall proceed as if no such challenge had been made.*

At what Stage.]—The challenge of a juror, either by the crown or by the prisoner, must be before the oath is commenced. The moment the oath is begun it is too late. The oath is begun by the juror taking the book, having been directed by the officer of the court to do so; but if the juror takes the book without authority, neither party wishing to challenge is to be prejudiced thereby. *Reg. v. Frost*, 9 C. & P. 136.

After issue joined between the crown and the prisoner when the jury is called, and before they are sworn, is the only time when the prisoner has the right of challenge. *Reg. v. Key*, 3 C. & K. 371; T. & M. 62, 63; 2 Den. C. C. 351; 15 Jur. 1065.

The challenge must be made before the book is given into the hands of the jury, and before the officer has recited the oath, and it is too late, though made before the juror kisses the book. *Reg. v. Giorgetti*, 4 F. & M. 546.

No challenge, either to the array or to the polls, can be taken until a full jury has appeared; therefore, where the challenges are taken previously, they are irregularly made, and out of season. *Reg. v. Edmonds*, 4 B. & A. 471.

No jury can be challenged until a full jury appears in the box. *Reg. v. Lacey*, 3 Cox, C. C. 517.

Number of Challenges.]—In a criminal information for conspiracy, where the trial takes place before a special jury struck under the old system, the traverser is entitled to six challenges from the reduced panel:—Held (per Barry, J., Fitzgerald, J., dissentiente), that the doctrine on this point is correctly stated by May, C. J., in *Reg. v. Casey* (13 Cox, C. C. 645). *Reg. v. Parnell* (No. 2), 14 Cox, C. C. 505.

Grounds of Challenge to Polls.]—On the trial of an indictment for a riot, it is ground for the prosecutor's challenging a juror, that he is an inhabitant of the town where the riot occurred, and that he has taken an active part in the matter which led to it. *Reg. v. Sivain*, 2 M. & Rob. 112; 2 Lewin, C. C. 116.

The fact that a juror is over sixty years of age is not a ground of challenge. *Mulcahy v. Reg.* (in error), 3 H. L. Cas. 306; and 1 Ir. R., C. L. 13.

Alienage is a ground of challenge to a juror; but if the party has an opportunity of making his challenge, and neglects, he cannot afterwards make the objection. *Reg. v. Sutton*, 8 B. & C. 417; S. C., nom. *Reg. v. Despard*, 2 M. & R. 406.

In a case of felony, after a prisoner has challenged twenty of the jurors peremptorily, he may still examine any other of the jurors who are subsequently called, as to their qualification. *Reg. v. Geach*, 9 C. & P. 499.

It is no cause of challenge of a juror by the counsel for the prosecution in case of felony, that the juror is a client of the prisoner, who is an attorney. *Ib.*

Nor that the juror has visited the prisoner as a friend since he has been in prison. *Ib.*

It is not a ground of challenge that a juror on other trials has not found a verdict for the crown. *Sawdon's case*, 2 Lewin, C. C. 117.

For Cause Shewn.]—If, on the trial of a case of felony, the prisoner peremptorily challenges some of the jurors, and the counsel for the prosecution also challenges so many that a full jury

cannot be had, the proper course is to call over the whole of the panel in the same order as before, only omitting those who have been peremptorily challenged by the prisoner, and, as each juror then appears, for the counsel for the prosecution to state their cause of challenge; and if they have not sufficient cause, and the prisoner does not challenge, for such juror to be sworn. *Reg. v. Geach*, 9 C. & P. 499.

Upon a challenge for cause, the person making the challenge must be prepared to prove the cause. *Reg. v. Savage*, 1 M. C. C. 51.

On the trial of a misdemeanor on the crown side of the assizes, it is a fair mode of practice to allow the defendants to object to the jurors, as they are called, without shewing any cause, till the panel is exhausted, and then to recall the jurors in the same order in which they were called at first, and then not to allow any challenge except for cause, and this is the constant practice on the Welsh circuit, where challenges of jurors very frequently occur. *Reg. v. Blakeman*, 3 C. & K. 97.

Peremptory Challenges.]—There can be no peremptory challenges in collateral issues. *Reg. v. Ratcliffe*, 1 W. Bl. 3.

The right of a prisoner to a peremptory challenge of jurors to the number of twenty exists in all cases of felony, and is not confined to those which are punishable capitally. *Gray v. Reg.* (in error), 11 C. & F. 427; 8 Jur. 879.

Challenge to Array.]—It is no objection in arrest of judgment that the sheriff, who was the prosecutor, returned the jury; it ought to have been taken by way of challenge. *Reg. v. Sheppard*, 1 Leach, C. C. 101.

Challenge to the array is only where the sheriff has been guilty of wilful default, and the summoning of the jury is a duty purely ministerial. *Reg. v. Burke*, 10 Cox, C. C. 519.

Where the sheriff's officer had neglected to summon one of the special jurymen returned on the panel:—Held, that this was no ground of challenge to the array for unindifferency on the part of the sheriff. *Reg. v. Edmonds*, 4 B. & A. 471.

A challenge of the array, stating that the sheriff "has not chosen the panel indifferently and impartially, as he ought to have done, and that the panel is not an indifferent panel," is bad, as being too general. *Reg. v. Hughes*, 1 C. & K. 235.

Challenging Jury afresh on Second Trial.]—Where a prisoner was found guilty on an indictment for larceny, which contained a count for a previous conviction, and, after conviction for the larceny, the court thought fit to swear the jury afresh to try the question of whether the prisoner had been previously convicted:—Held, that he was not entitled to challenge the jury afresh. *Reg. v. Key*, T. & M. 623; 2 Den. C. C. 347; 3 C. & K. 371; 21 L. J., M. C. 35; 15 Jur. 1065.

Challenging Jury afresh when one Jurymen taken ill.]—See *Reg. v. Edwards* and *Reg. v. Beere*, ante, col. 714.

Power of Prisoner to Withdraw.]—A prisoner, in a case of felony, having challenged twenty jurors peremptorily, cannot withdraw one of

those challenges to challenge another jury, instead of one that he had previously challenged. *Rea v. Parry*, 7 C. & P. 836; 1 Jur. 674.

Ordering Jurors to Stand by.—The right of ordering jurors to stand by, in cases of misdemeanor, may be exercised by a private prosecutor equally with the crown. *Reg. v. McGowen*, 11 Ir. C. L. R. 207.

On a writ of error upon an indictment for murder, the record stated, that in forming the jury, after challenges by the crown without cause assigned, and by the prisoner, nine only of those called were elected to be sworn. Twelve of the jurors returned upon the panel were during that time deliberating upon their verdict in another case. Thereupon the name of I., who had been before ordered to stand by upon a challenge by the crown without cause being assigned, was again called, and being again challenged by the crown, the counsel for the prisoner prayed that the crown might be put to assign cause. Before any judgment was given by the court the twelve jurors who sat as the jury in the other case came into court and gave their verdict. Thereupon the counsel for the crown prayed that I. should be ordered to stand by until those twelve should be called. The counsel for the prisoner objected that I. should be sworn, unless good cause of challenge was assigned by the crown. The court adjudged that I. should stand by, and that the names of the jurors who so came into court should then be called instead of the name of P., who stood next after I. The three required to complete the panel were taken from those jurors:—Held, that, it being conceded that the 33 Edw. 1, st. 4, and 6 Geo. 4, c. 50, s. 29, did not take away the power of the crown to challenge without assigning cause till the panel had been gone through or perused, the panel had not been gone through or perused, so as to require the crown to assign cause of challenge, when the twelve jurors came into court, nor until their names had been called, and thereupon the judge was right in ordering I. to stand by the second time. *Mansell v. Reg. (in error)*, 8 El. & Bl. 54; *Dears. & B. C. C.* 375; 27 L. J., M. C. 4—Ex. Ch.

The record stated that P., named on the panel, was called, and elected, and tried, to the intent that he should be sworn; without being sworn, he said that he had conscientious scruples against capital punishment. The counsel for the crown prayed that he should be ordered to stand by. The counsel for the prisoner prayed that the crown should assign cause of challenge. The judge told him that if he felt that he could not do his duty he had better withdraw; and thereupon it was ordered by the court that he should stand by:—Held, that this was a challenge by the crown without assigning cause, and therefore the judge was right in ordering P. to stand by. *Ib.*

Held, that the statement that the court ordered jurymen to stand by was unobjectionable, as it meant, that, being challenged by the crown, they were to stand aside until the proper time for deciding upon the challenge arrived. *Ib.*

Order in which Names Called.—The names of the jurors who had served in the other case, standing in different parts of the panel, were called over consecutively before any who had been already called once were called again:—Held, that this was a proper course; that there

was no fixed rule of practice as to the order in which the names of the jurors on the panel should be called; and that if the usual course was departed from it was not ground of error. *Ib.*

Talesmen—Who may be.—Where, on an indictment for the publication of a libel (appointed to be tried by a special jury), a tales panel was quashed for undifferency in the sheriff:—Held, that a writ of venire facias juratores might be awarded to the coroner of the county, although two of the special jurors summoned attended on a former occasion; and upon a prayer for an award of a tales de circumstantibus at nisi prius, it is not compulsory on the coroner or sheriff to select the talesmen from among the bystanders accidentally in court; but they may be chosen from among persons previously appointed by the coroner or sheriff to be in attendance, in expectation that a tales would be necessary. *Rea v. Dolby*, 3 D. & R. 311; 2 B. & C. 104.

Since 7 & 8 Will. 3, c. 32, talesmen can only be taken from the panel of the jury summoned to try the other causes, and not from the bystanders. *Rea v. Hill*, 1 C. & P. 667.

On the trial of a quo warranto, which has been made a special jury cause, jurors who have been summoned to try the prisoners on the crown side of the assize are not thereby qualified to act as talesmen. *Rea v. Tipping*, 1 C. & P. 668.

Warrant.—The warrant for a tales on a trial in a county palatine must come from the king's attorney-general. *Rea v. Lamb*, 4 Burr. 2171.

Semble, that, in an information at the suit of the attorney-general, a tales may be prayed for the crown without his warrant, though he is not present; but not for the defendant. *Att.-Gen. v. Parsons*, 2 M. & W. 23; 2 Gale, 227.

Some Special Jurymen not Summoned.—On the trial of an information for a libel, only ten special jurymen appeared, and two talesmen were accordingly sworn to fill up the jury:—Held, to be no ground for a new trial that two of the non-attending special jurymen named in the panel had not been summoned to attend, although it appeared that this fact was unknown to the defendant until after the trial was over. *Rea v. Hunt*, 4 B. & A. 430.

Challenge to array of.—On the trial at nisi prius of an indictment for libel, on which only three special jurors appeared, the counsel for the prosecution prayed a tales, and the defendant challenged the array of the tales, on the ground that the sheriff was a subscriber to a society who were the prosecutors; and, on issue taken on this challenge, two triers were appointed by the court, who found in favour of the challenge, and the cause was made a remanet. *Rea v. Dolby*, 1 C. & K. 238.

4. VIEW.

When Permitted.—Where, on the trial of a rape, it was wished on the part of the prisoner that the jury should see the place at which the offence was said to have been committed, and the place was so near to the court that the jury

could have a view without inconvenience, the judge allowed a view, although the prosecutor did not consent to it. *Reg. v. Whalley*, 2 C. & K. 376.

The court will only under peculiar circumstances grant a view in an indictment for perjury; but a view will be refused if there is any risk of its misleading the jury. *Anon.*, 2 Chit. 422.

An inspection by the jury of the locus in quo may be directed by the court in a criminal case. *Reg. v. Whalley*, 2 Cox, C. C. 231.

— **After Summing-up.**—It is no irregularity to allow a jury in a criminal case to have a view of premises after the judge has summed up. *Reg. v. Martin*, 1 L. R., C. C. 378; 41 L. J., M. C. 113; 26 L. T. 778; 20 W. R. 1016; 12 Cox, C. C. 204.

Venue Changed.—When it appears to be necessary for the purpose of a criminal trial that the jury should have a view of premises situated in a different county from that in which the offence was committed, this is sufficient reason for ordering the trial to take place in such county. *Reg. v. Sheldon*, 32 L. T. 27.

5. LOCKING UP.

Juryman ill.—If after a jury is locked up to consider their verdict in a capital case one of them is ill, the judge will allow a medical man to see him, and anything which the medical man in his discretion will give him *bonâ fide* as medicine he may have, but not sustenance. *Reg. v. Newton*, 3 C. & K. 85; 13 Q. B. 716; 3 Cox, C. C. 489; 18 L. J., M. C. 201; 13 Jur. 606.

Non-arrival of Witnesses.—After a trial for murder had commenced, it was ascertained that a witness had not arrived, but was expected by a train. The judge ordered the jury to be locked up until the arrival of the witness, had another jury called, and proceeded with another cause. *Reg. v. Forster*, 3 C. & K. 201.

In Cases of Misdemeanor.—Upon the trial of an indictment for a misdemeanor, which continued for more than one day, the jury, without the knowledge or consent of the defendants, separated at night:—Held, that the verdict was not therefore void. *Rea v. Kinnear*, 2 B. & A. 462.

6. DISCHARGE OF.

How long Jury should be kept.—After the jury has retired to consider their verdict in a criminal case, whether felony or misdemeanor, and has remained in deliberation a full and sufficient time without being able to agree upon a verdict, it is in the discretion of the judge to discharge them if there is no reasonable prospect of their agreeing upon a verdict. *Winsor v. Reg.* (*in error*), 1 L. R., Q. B. 289; 35 L. J., M. C. 121; 12 Jur., N. S. 91; 14 L. T. 195; 14 W. R. 423; 6 B. & S. 143. Affirmed on appeal, 1 L. R., Q. B. 390; 35 L. J., M. C. 161; 12 Jur., N. S. 561; 14 L. T. 567; 14 W. R. 695; 7 B. & S. 490—*Ex. Ch.*

— **Matter of Discretion.**—The exercise of such discretion by a judge cannot be reviewed by a court of error. *Ib.*

Effect of Discharge on Prisoner.—The maxim that a man cannot be put in peril twice for the same offence, means that a man cannot be tried again for an offence upon which a verdict of acquittal or conviction has been given, and not that a man cannot be tried again for the same offence where the first trial has proved abortive, and no verdict was given. *Ib.*

Where, in a case of misdemeanor, the jury is improperly and against the will of the defendant, discharged by the judge from giving a verdict after the trial has begun, this is not equivalent to an acquittal, nor does it entitle the defendant *quod erat sine die*. *Reg. v. Charlesworth*, 1 B. & S. 460; 9 Cox, C. C. 44; 31 L. J., M. C. 25; 8 Jur., N. S. 1091; 5 L. T. 150; 9 W. R. 842; *S. C.*, at nisi prius, 2 F. & F. 326.

Where a man was indicted, pleaded not guilty, and was given in charge to the jury, who retired to deliberate, and had not agreed upon a verdict by the time all the rest of the business before the court was finished, when they were discharged by the judge and the prisoner remanded:—Held, that the dismissal of the jury was not equivalent to an acquittal, and that he might lawfully be put upon his trial the second time. *Reg. v. Davison*, 2 F. & F. 250; 8 Cox, C. C. 360.

By Consent.—A jury may be discharged by consent, after having been charged. *Reg. v. Deane*, 5 Cox, C. C. 501.

One Juryman leaving without Permission.—In the course of the trial, and during the examination of witnesses, one of the jurors had, without leave, and without it being noticed by any one, left the jury-box and also the court house, whereupon the court discharged the jury without giving a verdict, and a fresh jury was empanelled. The prisoner was afterwards tried and convicted before a fresh jury:—Held, that the course pursued was right. *Reg. v. Ward*, 10 Cox, C. C. 573; 17 L. T. 220; 16 W. R. 281.

Grounds of—Relation to Prisoner.—If during the trial of a felony it is discovered that the prisoner has a relation on the jury, this is no ground for discharging the jury. *Reg. v. Wardle*, Car. & M. 647.

7. JURY PROCESS.

(15 & 16 Vict. c. 76, ss. 104, 105.)

The jury process in an indictment for a conspiracy was made returnable on one of the three days before full term; and on the same day a continuance by a new venire was awarded. Held not erroneous; inasmuch as the return day was conformable to 1 Will. 4, c. 3, s. 2, and the court, though not sitting for the dispatch of business before full term, might award the continuances on the return days. *Wright v. Reg.* (*in error*), 14 Q. B. 148; 14 Jur. 305—*Ex. Ch.*

Held, also, that, even if there had been a discontinuance in the jury process, the defendant waived the objection by afterwards pleading guilty to the indictment. *Ib.*

Two defendants being indicted for conspiracy, one of them cannot, on writ of error, object to a

discontinuance in the process against the other. *Ib.*

An indictment at quarter sessions contained two counts: one charging a stealing of moneys above the value of 5*l.* in a dwelling-house; the other charging simply a stealing of moneys of the same description as those contained in the first. The jury process directed the jury to be summoned to inquire if the prisoners were guilty of the felony in the indictment specified; and the verdict found them guilty of the felony aforesaid. Upon that verdict they were adjudged to be transported for fourteen years. The judgment was reversed in the Queen's Bench, with a direction that a venire de novo should be awarded by the sessions:—Held, first, that the jury process had been misawarded in the first instance, and therefore a venire de novo had been properly awarded by the Queen's Bench; and that it was no objection that judgment had been given upon the prisoners by the sessions. *Campbell v. Reg. (in error)*, 11 Q. B. 799; 17 L. J. M. C. 89; 12 Jur. 117—Ex. Ch.

Held, secondly, that the direction to award a venire de novo was not void, inasmuch as the sessions, being a court of oyer and terminer, is not an inferior court, and is a continuing court of oyer and terminer. *Ib.*

The record in an indictment set out an award of the venire to the sheriff, which required him to return "good and lawful men of the county," and stated that the sheriff returned persons following (naming them), but the return did not state that the persons named were "good and lawful men of the county":—Held, that the jurors must be taken to have been good and lawful men of the county. *Mansell v. Reg. (in error)*, 8 El. & Bl. 54; Dears. & B. C. C. 375; 27 L. J. M. C. 4.

The 16 & 17 Vict. c. 113 (Ir.), s. 109, which prescribes the summoning of jurors to try civil as well as criminal issues, according to the precept of the judge of assize, does not interfere with the common law authority of justices of gaol delivery to order a jury to be returned instant, when, from the panel having been quashed, or for any other reason, a sufficient jury cannot otherwise be had. *O'Neill v. Reg.*, 6 Cox, C. C. 495; 4 Ir. C. L. R. 221.

8. QUESTIONS FOR JURY.

Construction of unlawful Notice.]—The prisoner was indicted under the Whiteboy Act for posting a notice to the following effect:—"G. T. is hereby declared boycotted by the competent tribunal for taking into his employment Stanley, the assassin. All Irishmen must shun him as their deadly enemy." The indictment alleged that the notice tended (1) to excite an unlawful confederacy; (2) to excite a riot; (3) to induce persons to shun George Thompson against the form of the statute. The judge at the trial, upon the requisition of the counsel for the Crown, ruled that the notice on the face of it was an unlawful notice within the meaning of the statute, but reserved for the court the point whether he should have so ruled or should have left the question to the jury. The jury, in answer to the only question submitted to them, found that the prisoner had in fact posted the notice and the prisoner was accordingly convicted:—Held, that the notice was capable of bearing the meaning alleged in the indictment.

but that the question whether it did in fact bear such meaning should not have been withdrawn from the jury. *Reg. v. Coady*, 15 Cox, C. C. 89.

Particular Cases.]—See B. PARTICULAR OFFENCES.

V. COUNSEL, ADDRESSES TO JURY, &c.

1. *Counsel for Prosecution.*
2. *Defence by Counsel*, 725.
3. *Right of Reply and Summing up Evidence*, 729.

I. COUNSEL FOR PROSECUTION.

Duties of.]—It is a general principle of criminal procedure, that counsel for the prosecution should consider themselves not merely as advocates for a party, but as ministers of justice, and not as struggling for a verdict, but as assistants in the ascertainment of truth according to law. *Reg. v. Berens*, 4 F. & F. 842.

It is the duty of the counsel for the prosecution to be assistant to the court in the furtherance of justice, and not act as counsel for any particular person or party. *Reg. v. Hursfield*, 8 C. & P. 269.

The fiction of law in criminal cases is, that the judge is counsel for the prisoner. It is a violation of this principle, and indecent, to constitute the judge counsel for the prosecution, and leave him to make out from the depositions a case against the prisoner. Therefore, all prosecutions ought to be conducted by counsel, and the court will in all cases direct the depositions to be handed to counsel for that purpose. *Reg. v. Page*, 2 Cox, C. C. 220.

Where no counsel is engaged for the prosecution, and the depositions are handed, by direction of the court, to a gentleman at the bar, he should consider himself as counsel for the crown, and act in all respects as he would if he had been instructed by the prosecutor; and should not consider himself merely as acting in assistance of the judge, by examining the witnesses. *Reg. v. Littleton*, 9 C. & P. 671.

Whether Prosecutor can Conduct Case in Person.]—A prosecutor conducting his case in person, and who is to be examined as a witness in support of the indictment, has no right to address the jury as counsel. *Rev v. Brice*, 2 B. & A. 606; 1 Chit. 352.

In a criminal prosecution it is not competent to the prosecutor to appear and conduct the case in person. *Reg. v. Gurney*, 11 Cox, C. C. 414.

Opening Case for Prosecution.]—In opening the case for the prosecution in felony counsel ought to state declarations proposed to be proved, as well as facts. *Rev v. Orrell*, 1 M. & Rob. 469; *S. P.*, *Rev v. Davis*, 7 C. & P. 783; *Rev v. Hartel*, 7 C. & P. 773.

Unless the declarations amount to a confession; and then they should not be opened. *Rev v. Davis*, 7 C. & P. 783; *S. P.*, *Rev v. Hartel*, 7 C. & P. 773.

Where there is counsel for the prisoner, the counsel for the prosecution ought always to open the case; but he should not open if the prisoner has no counsel, unless there is some peculiarity in the facts of the case to require it. *Rev v. Gascoigne*, 7 C. & P. 772.

The counsel for the prosecution, in opening a case of murder, has a right to put hypothetically the case of an attack upon the character of any particular witness for the crown, and to state that if such attack should be made, he should be prepared to rebut it; he also has a right to read to the jury the general observations of a judge, made in a case tried some years before, on the nature and effect of circumstantial evidence, if he adopts them as his own opinions, and makes them part of his own address to the jury. *Reg. v. Courvoisier*, 9 C. & P. 362.

If additional evidence is discovered during the progress of a case, the counsel for the prosecution is not at liberty to open the nature of such evidence in an additional address to the jury. *Ib.*

Counsel for the prosecution opening no case against one prisoner, statements made by that prisoner are not to be used except in a regular way of evidence. *Reg. v. Gardner*, 9 Cox, C. C. 332.

2. DEFENCE BY COUNSEL.

Statute.—By 6 & 7 Will. 4, c. 114, s. 1, *persons tried for felonies, after the close of the case for the prosecution, may make full answer and defence thereto by counsel.*

By s. 2, in all cases of summary conviction, persons accused shall be admitted to make their full answer and defence, and to have all witnesses examined and cross-examined by counsel. Repealed by 11 & 12 Vict. c. 43, s. 36, but replaced by the same act, s. 12.

By 28 & 29 Vict. c. 18, s. 2, upon every trial for felony or misdemeanor, whether the prisoners or defendants, or any of them, shall be defended by counsel or not, each and every such prisoner or defendant, or his or their counsel respectively, shall be allowed, if he or they shall think fit, to open his or their case or cases respectively;

And after the conclusion of such opening, or of all such openings, if more than one, such prisoner or prisoners, or defendant or defendants, or their counsel, shall be entitled to examine such witnesses as he or they may think fit, and when all the evidence is concluded, to sum up the evidence respectively; and the right of reply, and practice and course of proceedings, save as hereby altered, shall be as at present.

Queen's Counsel.—On the trial of a criminal information a Queen's counsel ought not to be counsel for the defendant without a licence from the Queen, or at the least a letter from the secretary of state; and it is not enough that an application for a licence has been sent to the secretary of state from an assize town in the country, to which no answer has been received at the time of the cause being tried. *Reg. v. Bartlett*, 2 C. & K. 321.

Where a Queen's counsel was instructed to argue a criminal case for a defendant, on a point reserved, but at the time fixed for the argument, had not obtained a licence from her Majesty to argue against the crown, but only a certificate from the secretary of state's office, the court directed the argument to stand over for such licence to be obtained. *Reg. v. Jones*, 9 C. & P. 401; 2 M. C. C. 171.

Assignment by the Court.—The court may

properly request counsel to give his honorary services to a prisoner. Aliter, with an attorney. But the court will recommend, that, in such cases, the crown should pay the fees both of counsel and attorney, as assigned. *Reg. v. Fogarty*, 5 Cox, C. C. 161.

On a trial for murder, the court refused to allow counsel to appear for a prisoner without his expressed assent. *Reg. v. Yscuado*, 6 Cox, C. C. 386.

Order of Defending several Prisoners.—Where the counsel for several prisoners cannot agree as to the order in which they are to address the jury, the court will call upon them, not in the order of their seniority, but in the order in which the names of the prisoners stand in the indictment. But where the counsel for one prisoner has to examine witnesses to facts, the counsel for another cannot be allowed to postpone his address to the jury until after those witnesses have been examined. *Reg. v. Barber*, 1 C. & K. 434.

Where two prisoners are jointly indicted, and the second in the indictment only is defended by counsel, the latter will be permitted to address the jury before the other makes his statement, notwithstanding the rule established in *Reg. v. Richards* (1 Cox, C. C. 62). *Reg. v. Hazell*, 2 Cox, C. C. 220.

Where one prisoner was indicted for stealing and the other for receiving, and the receiver was defended by counsel, but the principal felon was undefended, the court called upon the principal to make his statement to the jury before the counsel for the receiver was permitted to address them. *Reg. v. Martin*, 3 Cox, C. C. 56.

Where two are indicted, one for larceny, and the other as receiver of the stolen property, the latter of whom is defended by counsel, and the former not, the counsel for the receiver should make his defence first. *Reg. v. Belton*, 5 Jur., N. S. 276.

When several prisoners are defended by different counsel, the order of their defences is not to be determined by the seniority of their counsel at the bar, but on the precise offence charged against each; and in a well-drawn indictment, the order in which the prisoners should be called on for their defence usually coincides with the order of their names in the indictment. *Reg. v. Meadows*, 2 Jur., N. S. 718.

Where several persons are indicted for the same offence, the order in which they should be called on to make their defence is not determined by the order in which their names stand in the indictment. *Reg. v. Holman*, 3 Jur., N. S. 722.

Where two were indicted for the same offence, with a second count charging one of them as accessory after the fact, the one named first in the indictment, though he had no counsel, was heard in his defence before the other, who was defended by counsel. *Reg. v. Thomas*, 3 Jur., N. S. 272.

Contents of Address.—A prisoner's counsel, in addressing the jury, will not be allowed to state anything which he is not in a situation to prove, or which is not already in proof; nor will he be allowed to state the prisoner's story. *Reg. v. Beard*, 8 C. & P. 142; *S. P.*, *Reg. v. Butcher*, 2 M. & Rob. 228.

But on an indictment for murder, the death having been caused by shot from a gun in the

hands of the prisoner, the prisoner's counsel was allowed to make a statement on the part of the prisoner to shew that the trigger of the gun was pulled without the intention of firing it. *Reg. v. Weston*, 14 Cox, C. C. 346.

The jury should take the law from the judge, and therefore when cases had been cited to the judge in a legal argument and he had given an opinion on them, they were not allowed to be read to the jury in the address of the prisoner's counsel to them. *Reg. v. Parish*, 8 C. & P. 94.

Addressing Jury again after Evidence offered by other Prisoner.]—Two were indicted for manslaughter; the counsel for one of them having addressed the jury on his behalf, the counsel for the second prisoner did the same, and called witnesses, whose evidence tended to show negligence on the part of the first:—Held, that the counsel for the first prisoner had a right to cross-examine the witnesses for the second, and then to address the jury again, confining himself to comments on the testimony the second prisoner had adduced. *Reg. v. Wood*, 6 Cox, C. C. 224.

Where one prisoner calls a witness who gives evidence tending to criminate another prisoner, the counsel of the latter has a right to cross-examine the witness, and address the jury on his evidence. *Reg. v. Luck or Burdett*, Dears. C. C. 431; 3 C. L. R. 440; 24 L. J., M. C. 63; 1 Jur., N. S. 119.

L., B. and C. were indicted for larceny, and were defended by separate counsel. At the close of the case for the prosecution C. was acquitted by direction of the court, and was afterwards called by L. as his witness. C.'s evidence tended to criminate B.:—Held, that B.'s counsel was entitled to cross-examine the witness C., and reply upon his evidence. *Id.*

A. and B. were indicted for manslaughter; the counsel of A. called a witness, who gave evidence which brought home the crime to B., whereupon his counsel was allowed to examine the witness and address the jury after A.'s counsel had closed his case and had summed up his evidence. *Reg. v. Copley*, 4 F. & F. 1097.

Whether Prisoner and his Counsel may Address Jury.]—If the prisoner's counsel has addressed the jury, the prisoner himself will not be allowed to address the jury also. *Reg. v. Bouher*, 8 C. & P. 141; *S. P.*, *Reg. v. Burrows*, 2 M. & Rob. 124.

But on the trial of a case of shooting, with intent to do grievous bodily harm, there having been no person present at the time of the offence but the prosecutor and prisoner, the latter was, under these special circumstances, allowed to make a statement before his counsel addressed the jury. *Reg. v. Malins*, 8 C. & P. 242.

But the privilege is not to be considered as a precedent with respect to the general practice in such cases. *Reg. v. Walking*, 8 C. & P. 243.

A prisoner charged with felony, who is defended by counsel, ought not to be allowed to make a statement in addition to the defence of counsel, unless under very particular circumstances; and the general rule ought to be, that a prisoner defended by counsel should be entirely in the hands of his counsel; and that rule should not be infringed, except in very special cases. *Reg. v. Rider*, 8 C. & P. 531.

On a trial for felony, a prisoner, if defended by

counsel, ought not to be allowed to make a statement to the jury in his defence. *Reg. v. Manzano*, 8 Cox, C. C. 321; 2 F. & F. 64; 6 Jur., N. S. 406.

A prisoner will be allowed to make his own statement to the jury, but his counsel cannot be permitted afterwards to address the jury for him. *Reg. v. Taylor*, 1 F. & F. 535.

A prisoner on his trial defended by counsel is not entitled to have his explanation of the case to the jury made through the mouth of his counsel, but may, at the conclusion of his counsel's address, himself address the jury and make such statement, subject to this, that what he says will be treated as additional facts laid before the court, and entitling the prosecution to the reply. *Reg. v. Shimmis*, 15 Cox, C. C. 122.

The prisoners, who were defended by counsel, were indicted for maliciously shooting at the prosecutor, and at the conclusion of the evidence for the prosecution, without waiting for their counsel, they themselves addressed the jury in their defence. When they had concluded their observations, the judge permitted their counsel then to address the jury on their behalf. *Reg. v. Stephens*, 11 Cox, C. C. 669.

A foreigner, indicted for felony, being unable to speak English, the proceedings were explained to him by an interpreter. He was defended by counsel, who cross-examined the witnesses for the prosecution; at the close of which the judge, through the interpreter, acquainted the prisoner that he might choose whether he would make his defence himself or allow his counsel to make it for him, but that both could not be heard. *Reg. v. Teste*, 4 Jur., N. S. 244.

— Counsel arguing Points of Law.]—On the trial of an indictment for perjury, the judge will allow the defendant to address the jury and cross-examine the witnesses, and his counsel to argue points of law, and suggest questions to him for the cross-examination of the witnesses. *Reg. v. Parkins*, 1 C. & P. 548; R. & M. 166.

Where, on an information for a misdemeanor, the defendant conducts his own defence, counsel may be heard on any point of law which arises. *Reg. v. White*, 3 Camp. 98.

But he cannot have the assistance of counsel in examining and cross-examining witnesses, and reserve to himself the right of addressing the jury. *Id.*

Number of Counsel for Defence.]—Not more than two counsel are entitled to address the court for a prisoner during the trial upon a point of law. *Reg. v. Bernard*, 1 F. & F. 240.

Appearance by Separate Counsel.]—Several defendants charged in an indictment with different illegal acts severed in their defence, and being convicted and sentenced to different punishments, brought separate writs of error:—Held, that they were entitled to appear by separate counsel, and that such counsel were severally entitled to reply. *O'Connell v. Reg. (in error)*, 11 C. & F. 155; 9 Jur. 25.

Objection to being Defended by Counsel—Writ of Error.]—On a trial for murder, the prisoner objecting to be defended by counsel, but, in the result, allowing counsel to act for him, he was

not afterwards allowed to raise any objection to the proceeding, and a fiat for a writ of error was refused. *Reg. v. Southey*, 4 F. & F. 864.

Addresses in Mitigation.—Where a party had pleaded guilty at the Central Criminal Court to an indictment for libel, and affidavits were filed both in mitigation and aggravation, the judges refused to hear counsel on either side, but formed their judgment of the case by reading the affidavits. *Reg. v. Gregory*, 1 C. & K. 228.

3. RIGHT OF REPLY, AND SUMMING UP EVIDENCE.

Statute.—By 28 & 29 Vict. c. 18, s. 2, *if any prisoner or prisoners, defendant or defendants, shall be defended by counsel (and by s. 9, the word counsel includes attorneys where attorneys are allowed by law, or by the practice of any court, to appear as advocates), but not otherwise, it shall be the duty of the presiding judge, at the close of the case for the prosecution, to ask the counsel for each prisoner or defendant so defended by counsel whether he or they intend to adduce evidence; and in the event of none of them thereupon announcing his intention to adduce evidence, the counsel for the prosecution shall be allowed to address the jury a second time in support of his case, for the purpose of summing up the evidence against such prisoner or prisoners, or defendant or defendants.*

Prosecution—Right to sum up when Prisoner calls no Witnesses.—It being a general principle of criminal procedure, that counsel for the prosecution should consider themselves not merely as advocates for a party, but as ministers of justice, and not as struggling for a verdict, but as assistants in the ascertainment of truth according to law; therefore, counsel for the prosecution ought not to exercise their right of summing up the evidence where the prisoner calls no witnesses, unless counsel really, in their discretion, deem it to be necessary for the purposes of justice. *Reg. v. Berens*, 4 F. & F. 842.

Under 28 & 29 Vict. c. 18, s. 2, the counsel for the prosecution ought not, when the prisoner calls no witnesses, to sum up the evidence. *Reg. v. Webb*, 4 F. & F. 862.

Contents of Summing up.—The counsel for the prosecution ought not, in summing up the evidence, to make observations on the prisoner's not calling witnesses, unless at all events it has appeared that he might be fairly expected to be in a position to do so. Neither ought counsel to press it upon the jury that, if they acquit the prisoner, they may be considered to convict the prosecutor or prosecutrix of perjury. *Reg. v. Puddick*, 4 F. & F. 497.

Reply before Evidence in Reply.—Where counsel for the prosecution, intending to put in evidence in reply, begins his reply to the jury before doing so per incuriam, he ought not, therefore, to be debarred from the right to put in his evidence in the usual course. *Reg. v. White*, 2 Cox, C. C. 192.

Reply to Prisoner's Statement.—A prisoner on his trial defended by counsel is not entitled to have his explanation of the case to the

jury made through the mouth of his counsel, but may, at the conclusion of his counsel's address, himself address the jury and make such statement, subject to this, that what he says will be treated as additional facts laid before the court, and entitling the prosecution to the reply. *Reg. v. Shimmis*, 15 Cox, C. C. 122.

When Reply allowed.—A statement of facts not intended to be proved gives a reply to the counsel for the prosecution. *Reg. v. Butcher*, 2 M. & Rob. 228.

It is entirely at the discretion of the prosecutor's counsel, whether he will exercise his right of reply or not. *Rea v. Whiting*, 7 C. & P. 771.

The counsel for the crown, where the crown is the defendant in a writ of error, is not necessarily entitled to the final reply, though the crown is the real litigant party. *O'Connell v. Reg.* (in error), 11 C. & F. 155; 9 Jur. 25.

The prosecuting counsel ought not to reply where witnesses are called to character only. *Patteson's case*, 2 Lewin, C. C. 262.

A prosecutor's counsel has, in strictness, the right of reply, though the counsel for the prisoner only calls witnesses to character. *Rea v. Stannard*, 7 C. & P. 673.

Witnesses merely called as to character do not give the counsel for the prosecution a reply. *Reg. v. Douse*, 4 F. & F. 492.

Several Prisoners—Evidence Adduced by Some only.—A. was charged with feloniously carnally knowing and abusing a girl under ten. B. was charged with being present, aiding and abetting. A.'s counsel called no witnesses; B., who had no counsel, called a witness to prove an alibi for A. —Held, that the evidence was in effect evidence for A., and that, in strictness, the counsel for the prosecution had a right to reply on the whole case, but that it was summum jus, and ought to be exercised with great forbearance. *Reg. v. Jordan*, 9 C. & P. 118.

Three were indicted for murder, and witnesses were called for the defence of one only:—Held, that the counsel for the prosecution was entitled to reply generally, and was not to be limited in his reply as against the prisoner for whom the witnesses were called, although the evidence adduced for the one did not affect the case as it respected the other two, but if the evidence against two affect them with different offences, such as larceny and receiving, and one calls witnesses, there is no right of reply against both. *Reg. v. Blackburne*, 3 C. & K. 330; 6 Cox, C. C. 333.

Two being indicted for night poaching, the defence being on the question of identity, one of them calling witnesses to prove an alibi, the other calling no witnesses, the counsel for the prosecution was allowed a general reply on the whole case as against both. *Reg. v. Briggs*, 1 F. & F. 106.

The prisoners were indicted for obtaining goods by false pretences and conspiracy to defraud. At the close of the evidence for the prosecution, witnesses were called for the defendants Welham and Schneider only, whose evidence was applicable to their respective cases only, and did not affect the cases of the other defendants:—Held, that the counsel for the prosecution should confine his reply to the cases of Welham

and Schneider. *Reg. v. Trevelli*, 15 Cox, C. C. 289.

Where there are several prisoners, and they sever in their defences, if one should call witnesses and the others not, the right of reply is in practice confined to the case against the prisoner who has called witnesses. *Reg. v. Burton*, 2 F. & F. 788.

A. and B. were indicted for manslaughter; the counsel of A. called a witness, who gave evidence which brought home the crime to B., whereupon his counsel was allowed to examine the witness and address the jury after A.'s counsel had closed his case and had summed up his evidence; the counsel for the prosecution being entitled to a general reply. *Reg. v. Copley*, 4 F. & F. 1097.

— By the Attorney or Solicitor-General.]—

The attorney-general may reply with new matter in collateral issues, though no evidence is given for the prisoner. *Rex v. Ratcliffe*, 1 W. Bl. 3.

Where the attorney-general or a king's counsel states that he appears officially to conduct a prosecution on an indictment for misdemeanor, he is entitled to reply, though the defendant calls no witness. *Rex v. Marsden*, M. & M. 439.

Martin, B., intimated that he thought the right of reply on behalf of the crown a bad practice, and that he should confine the right to the attorney-general of England in person. *Reg. v. Christie*, 1 F. & F. 75.

The right of reply, where no evidence is called for the defence on behalf of the crown, in Mint cases, was not admitted. *Reg. v. Taylor*, 1 F. & F. 535.

In a prosecution by the post-office for a felony, it being stated by the counsel for the prosecution that he appeared as representative of the attorney-general; on the ground of his representing the attorney-general, he was entitled to reply without reference to the prisoner's having called witnesses or not. *Reg. v. Gardner*, 1 C. & K. 628.

In conducting prosecutions for the post-office, where the solicitor-general appears on behalf of the attorney-general, he has, on the part of the crown, the right to reply on the whole case, although the prisoner calls no witnesses. *Reg. v. Toakley*, 10 Cox, C. C. 406; *S. P.*, *Reg. v. Barrow*, 10 Cox, C. C. 407.

The attorney-general for the county palatine, though prosecuting in person, has no right to reply. *Reg. v. Christie*, 7 Cox, C. C. 506.

In a prosecution directed by the poor law board, counsel for the crown cannot claim the right to reply where the prisoner calls no witnesses. *Reg. v. Beckwith*, 7 Cox, C. C. 505.

VI. EVIDENCE.

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1. CONFESSIONS AND ADMISSIONS.

a. Confessions, when Admissible.

Inducement—Hope of Benefit.]—On a trial for larceny, evidence was received of a confession made by the prisoner to the prosecutor in the presence of a police inspector, immediately after the prosecutor had said to the prisoner, "The inspector tells me you are making house-breaking implements; if that is so, you had better tell the truth, it may be better for you."—Held, that the confession was not admissible in evidence. *Reg. v. Fennell*, 7 Q. B. D. 147; 50 L. J., M. C. 126; 44 L. T. 687; 29 W. R. 742; 45 J. P. 666; 14 Cox, C. C. 607.

Z. was indicted for feloniously having in his possession a lithographic stone, on which was engraved a portion of a Dutch coupon. In the presence of an agent of the Dutch consulate, and of the person who signed the coupons, and after Z. had been told that if he had had anything to do with lithographing it, it would be better for him to tell it, he made a statement:—Held, that it was admissible against him. *Reg. v. Zeigert*, 10 Cox, C. C. 555. Sed quære.

The prisoner, while in the custody of a policeman on a charge of arson, said to her mistress, "If you forgive me I will tell you the truth." The mistress answered, "Ann, did you do it?" The prisoner thereupon made a statement:—Held, that the statement thus made was inadmissible against the prisoner. *Reg. v. Mansfield*, 14 Cox, C. C. 639.

If a prisoner is told, "You had better split, and not suffer for all of them;" this is such an inducement to confess as will exclude what the prisoner said in consequence of it. *Rex v. Thomas*, 6 C. & P. 363.

So, where the witness said to the prisoner, "It would have been better if you had told at first." *Rex v. Walkley*, 6 C. & P. 175.

The prosecutor in the presence of a constable said to the prisoner, "It will be better for you to tell the truth, as it will save the shame of a search-warrant in your house." This statement was rejected. *Reg. v. Collier*, 3 Cox, C. C. 57.

A girl was charged with administering poison

with intent to murder. The surgeon said to her, "You are under suspicion of this, and you had better tell all you know." After this she made a statement to the surgeon:—Held, that that statement was not admissible. *Reg. v. Kingston*, 4 C. & P. 387.

— **No use Denying it.**—A constable said to a person charged with felony, "It is of no use for you to deny it, for there is the man and boy who will swear they saw you do it."—Held, that this was such an inducement as would exclude evidence of what the prisoner said. *Reg. v. Mills*, 6 C. & P. 140.

— **If Handcuffs are Taken off.**—A prisoner charged with felony, being in custody, handcuffed, in the house of the prosecutor, after a conversation with the prosecutor and another person, in which he was told that they would do all they could for him, said, "If the handcuffs are taken off, I will tell you where I put the property."—Semble, that this statement was receivable, and could not be objected to, either as a confession made under a promise, or a statement obtained by duress. *Reg. v. Green*, 6 C. & P. 655.

— **Promise not to Repeat Statement.**—A witness stated, that a prisoner charged with felony asked him if he had better confess; and the witness replied, that he had better not confess, but that the prisoner might say what he had to say to him, for it should go no further. The prisoner made a statement:—Held, that it was receivable on the trial. *Reg. v. Thomas*, 7 C. & P. 345.

A. was in custody on a charge of murder. B., a fellow prisoner, said to him, "I wish you would tell me how you murdered the boy—pray split." A. replied, "Will you be upon your oath not to mention what I tell you?" B. went upon his oath that he would not tell. A. then made a statement:—Held, that this was not such an inducement to confess as would render the statement inadmissible. *Reg. v. Shaw*, 6 C. & P. 372.

— **Receiving Something to Drink.**—Where a prisoner said to the officer in whose custody he was, "If you will give me a glass of gin, I will tell you all about it."—Held, that a confession made in consequence of his having received some gin was inadmissible. *Reg. v. Seaton*, 3 Russ. C. & M. 368.

— **Seeing Wife.**—A. and his wife were separately in custody on a charge of receiving stolen property. A person who was in the room with A. said, "I hope you will tell, because Mrs. G. (the prosecutrix) can ill afford to lose the money;" and the constable then said, "If you will tell where the property is, you shall see your wife."—Held, that a statement made by A. afterwards was admissible. *Reg. v. Lloyd*, 6 C. & P. 393.

— **Under the Influence of a Reward or a Pardon.**—The mere knowledge by a prisoner of a handbill, by which a government reward and a promise of a pardon are offered in a case of murder, are not sufficient ground for rejecting a confession of such prisoner, unless it appears that the inducements there held out were those

which led the prisoner to confess. *Reg. v. Boswell*, Car. & M. 584.

Where a prisoner desired that any handbill that might appear concerning a murder, with which he stood charged, might be shewn to him, and a handbill was shewn to him by a constable, by which a reward and a free pardon were offered to any but the person who struck the blow, and the prisoner three days afterwards made a statement, this statement was held to be receivable in evidence. *Ib.*

But where it was afterwards proved by another constable that the prisoner, on the night before he made the statement, said to him, that he saw no reason why he should suffer for the crime of another, and that as the government had offered a free pardon to any one concerned who had not struck the blow, he would tell all he knew about the matter:—The judge held, that the statement that had already been given in evidence was not properly receivable, and struck it out of his notes. *Ib.*

Several prisoners being in custody on a charge of murder, A., who was one of them, said to the chaplain of the prison, that he wished to see a magistrate, and asked if any proclamation had been made, and any offer of pardon. The chaplain said that there had; but he hoped that A. would understand that he could offer him no inducement to make any statement, as it must be his own free and voluntary act. When A. saw the magistrate, he said that no person had held out any inducement to him to confess anything, and that what he was about to say was his own free and voluntary act and desire. A. then made a statement to the magistrate:—Held, that this statement was receivable against A. on his trial for the murder. *Reg. v. Dingley*, 1 C. & K. 637.

A., a prisoner charged with murder, was visited by B., who was both a magistrate and a clergyman; B. told him, that if he was not the person who struck the fatal blow, and he would tell all he knew, he (B.) would use his endeavours and influence to prevent anything from happening to him; and that if he (A.) did not make a disclosure, some one else would probably do so. After this B. wrote to the secretary of state, who returned an answer that mercy could not be extended to A.; which answer was communicated by B. to A. After this A. sent for the coroner and wished to make a statement. The coroner told him that if he did so it would be used in evidence against him. The prisoner made a confession:—Held, that this confession was admissible. *Reg. v. Clewes*, 4 C. & P. 221.

Statements made by a prisoner with the knowledge of a reward and a pardon to any but the actual perpetrator of the offence, and under circumstances which led to the belief that such statements were made with the hope of receiving the reward, and being allowed to give evidence as a witness on the part of the crown, are inadmissible. *Reg. v. Blackburn*, 6 Cox, C. C. 333.

A printed copy of a reward offered for such private information and evidence as would lead to the detection and conviction of a murderer or the murderers, and a statement that the secretary of state would recommend the grant of a pardon to any accomplice, not having been the actual perpetrator of the murder, who should give such evidence, was hung up in the magistrate's room in a county gaol. A prisoner, who could read, made a statement to the governor of the gaol in

this room, and before that statement inquired whether he could give evidence, but did not say that he made the statement in that expectation, or in the hope of getting the reward, and before making the statement, he was told it would be used against him :—Held, that such statement was inadmissible. *Id.*

But statements made, and anonymous letters written by a prisoner before his apprehension, are not inadmissible merely on the ground of the prisoner's knowledge of the offer of the reward and pardon, or by reason of his having been employed by the police authorities and paid money for his support, under the belief that he was an important witness for the crown. *Id.*

— **Benefit expected must be Temporal.**—A prisoner charged with murder, being a few days short of fourteen, was told by a man who was present when he was taken up, but not by a constable, "Now kneel you down, I am going to ask you a very serious question, and I hope you will tell me the truth, in the presence of the Almighty ;" the prisoner, in consequence, made certain statements :—Held, strictly admissible. *Rea v. Wild*, 1 M. C. C. 452.

A constable who apprehended a prisoner, asked him what he had done with the tap he had stolen from the prosecutor's premises ; and said, "You had better not add a lie to the crime of theft :"—Held, that a confession made to the constable was not receivable. *Rea v. Sheppard*, 7 C. & P. 579.

The mother of a little boy, in custody on a charge of attempting to obstruct a railway train, said to him and another little boy in custody also on the same charge, in the presence of the mother of the latter and of the policeman, "You had better, as good boys, tell the truth," whereupon both boys confessed :—Held, that the confession was clearly admissible. *Reg. v. Reeve*, 1 L. R., C. C. 362 ; 41 L. J., M. C. 92 ; 26 L. T. 403 ; 20 W. R. 631 ; 12 Cox, C. C. 179.

A daughter of the prosecutor (the prisoner's master), but who did not live with her father, and was not the prisoner's mistress, whilst she had temporary charge of the prisoner, who had been previously taken into custody, said to her, "I am very sorry for you, you ought to have known better. Tell me the truth, whether you did or no. Do not run your soul into more sin, but tell the truth ;" when the prisoner made a full confession :—Held, that there was no threat or inducement held out to the prisoner. *Reg. v. Sleoman*, 6 Cox, C. C. 245 ; *Dears*, C. C. 249 ; 2 C. L. R. 129 ; 23 L. J., M. C. 19 ; 17 Jur. 1082.

The prosecutor called the prisoner to his room and said, "Jarvis, I think it is right I should tell you that, besides being in the presence of my brother and myself, you are in the presence of two officers of the police, and I should advise you that, to any question that may be put to you, you will answer truthfully, so that if you have committed a fault you may not add to it by stating what is untrue." A letter was then produced, which Jarvis said he had not written, and the prosecutor then added, "Take care, Jarvis ; we know more than you think we know :"—Held, that the answer of the prisoner in the nature of a confession was admissible. *Reg. v. Jarvis*, 1 L. R., C. C. 96 ; 37 L. J., M. C. 1 ; 17 L. T. 178 ; 16 W. R. 111 ; 10 Cox, C. C. 574.

A prisoner was before a magistrate on a charge of felony, and, after the examination of the wit-

nesses against him, the magistrate said to him, "Be sure you say nothing but the truth, or it will be taken against you, and may be given in evidence against you at your trial :"—Held, that this did not exclude the prisoner's statement from being given in evidence. *Reg. v. Holmes*, 1 C. & K. 248.

On a prisoner being brought before a magistrate on a charge of forgery, the prosecutor said, in the hearing of the prisoner, that he considered the prisoner as a tool of G. ; and the magistrate then told the prisoner to be sure to tell the truth ; upon this the prisoner made a statement :—Held, that the statement was receivable. *Rea v. Court*, 7 C. & P. 486.

A policeman asked the prisoner, a boy between eight and nine years old, various questions as to his going to school, knowing the Lord's Prayer, where he would go to if he told a lie, whether God knew everything ; and then asked, whether he thought God knew who set fire to the haystack. The boy not answering, and beginning to cry, the policeman asked him if he could give any information about the fire, and receiving no answer, he said he should apprehend him upon charge of setting fire to the haystack. The boy then made a statement :—Held, that it was not admissible. *Reg. v. Day*, 2 Cox, C. C. 209.

— **To Chaplains.**—A prisoner committed on a charge of murder sent for the chaplain to pray with him, who told him that, as the minister of God, he ought to warn him not to add sin to sin by attempting to dissemble with God, and that it would be important for him to confess his sins before God, and to repair as far as he could any injury he had done. The chaplain had two interviews with the prisoner, and considered he had made a great impression on him, but distinctly told him he did not wish him to confess. After this the prisoner made two confessions to the gaoler and the mayor, after having been warned of the consequences by both those persons :—Held, that these confessions were good evidence, and rightly received. *Rea v. Gilham*, Car. C. L. 51 ; 1 M. C. C. 186.

A chaplain to a workhouse had, in his spiritual capacity, frequent conversations there with the prisoner, who was charged with the murder of her child, but who was too ill to be removed from the workhouse. Semble, that these conversations ought not to be adduced in evidence at the trial. *Reg. v. Griffin*, 6 Cox, C. C. 219.

Threats—What are Sufficient.—A policeman asked a prisoner, who was suspected of having made away with her illegitimate child, to tell him where it was. She refused to do so, upon which he said that if she did not tell she might get herself into trouble, and it would be the worse for her. Then she made a statement :—Held, that the statement was inadmissible. *Reg. v. Coley*, 10 Cox, C. C. 536.

The words, "I must know more about it," said by a police constable to a prisoner in the course of conversation between them respecting the subject-matter of the charge, immediately before apprehension, are not a sufficient inducement to exclude an admission. *Reg. v. Reason*, 12 Cox, C. C. 228.

The prosecutrix lost her purse, containing 1*l.* 4*s.*, in a market, and asked the prisoner, who had been standing near her, whether he had seen the purse or seen any one pick it up. He replied

that he had not. She, however, suspecting that he had robbed her, gave information to the police. A policeman, a short time afterwards, went in search of the prisoner, and having found him, told him that the prosecutrix had lost her purse, and that it was supposed that he had picked it up, and added, "Now is the time for you to take it back to her." He denied having it, and went with the policeman. As they went along he commenced making a statement, but the policeman told him to say nothing until they saw the prosecutrix. Having met the prosecutrix after they had walked about 600 yards, some conversation took place and the prisoner was searched, and on a half-sovereign being found, the prisoner said to the prosecutrix that he would make it all up to her. Twenty minutes had elapsed between the time of the policeman's remark, "Now is the time to take it back to her," and the prisoner's, "that he would make it all up to her."—Held, that there was no inducement held out to the prisoner, and that his statement or confession (that he would make it all up to her) was admissible against him. *Reg. v. Jones*, 12 Cox C. C. 241; 27 L. T. 765.

A person being in custody, and having been charged with setting fire to some bobbins of cotton in a mill, was shewn a piece of paper (partially burnt) with writing on it, which had been found among the burnt property. Without receiving any caution whatever, he was then asked by the policeman whose writing it was, and what he had done with the remainder of it:—Held, that what he said in answer to the questions was receivable, as the questions did not amount to a threat. *Reg. v. Regan*, 17 L. T. 325.

The captain of a vessel said to one of his sailors, suspected of having stolen a watch, "That unfortunate watch has been found, and if you do not tell me who your partner was, I will commit you to prison as soon as we get to Newcastle; you are a damned villain, and the gallows is painted in your face."—Held, that a confession made by the sailor after this threat was not receivable on his trial for the felony. *Reg. v. Parratt*, 4 C. & P. 470.

A confession, induced by saying, "Unless you give me a more satisfactory account, I will take you before a magistrate," or by saying, "Tell me where the things are, and I will be favourable to you," cannot be given in evidence. *Reg. v. Thompson*, 1 Leach, C. C. 291; *S. P.*, *Reg. v. Cass*, 1 Leach, C. C. 293, n.

Where the prosecutor asked the prisoner, on finding him, for the money which the prisoner had taken out of the prosecutor's pack, but before the money was produced said "he only wanted his money, and if the prisoner gave him that he might go to the devil if he pleased;" upon which the prisoner took 11s. 6^{d.} out of his pocket, and said "it was all he had left of it:"—Held, that the confession could not be received. *Reg. v. Jones*, R. & R. C. C. 142; *S. P.*, *Reg. v. Clarke*, Car. C. L. 59.

After an investigation before a magistrate on a charge of concealment of birth, and after the accused had been cautioned in the usual manner, and had stated that she had nothing to say, but before her actual committal, the presiding magistrate asked her what she had done with the body of the child:—Held, that her statement in answer was not admissible. *Reg. v. Berriman*, 6 Cox, C. C. 388.

A prosecutor said to the prisoner, "I should be obliged to you if you would tell us what you know about it; if you will not, we, of course, can do nothing."—Held, that this was such an inducement to confess, as would exclude what the prisoner said. *Reg. v. Partridge*, 7 C. & P. 551.

Admissions by a prisoner, elicited by questions of a police officer, with an admonition to tell all she knew, are inadmissible. *Reg. v. Cheverton*, 2 F. & F. 833.

Obtained by Persons in Authority.]—It is the opinion of the judges that evidence of any confession is receivable, unless there has been some inducement held out by some person in authority. *Reg. v. Taylor*, 8 C. & P. 733.

If a person, not in office or in authority, holds out to an accused party an inducement to confess, this will not exclude a confession made to that person. *Ib.*

—Who are.]—Where, on the apprehension of a prisoner for larceny, persons having nothing to do with the apprehension, prosecution or examination of the prisoner, advised him to tell the truth and consider his family:—Held, that such admonition was no ground for excluding a confession made an hour afterwards to the constable in prison. *Reg. v. Row*, R. & R. C. C. 153.

The confession of a girl fifteen years old, occasioned by many applications by the prosecutor's relations and neighbours, amounting to threats and promises, is not receivable. *Reg. v. Simpson*, 1 M. C. C. 410.

So a confession obtained from a servant through hopes and threats held out by the wife of the master and prosecutor, is inadmissible. *Reg. v. Upehureh*, 1 M. C. C. 465.

The wife of a person in whose house an offence is committed, such person not being prosecutor, nor engaged in the apprehension, prosecution or examination of the offender, and the offence not being in any way connected with the management of the house, is not a person in authority within the rule which excludes confessions. *Reg. v. Moore*, 2 Den. C. C. 522; 3 C. & K. 153; 5 Cox, C. C. 555; 21 L. J., M. C. 199; 16 Jur. 621.

Upon a trial for child murder the prisoner's confession to a surgeon, who was attending her, was offered. Before the surgeon came in, her mistress had told her that she had better speak the truth; and she had said, in answer, that she would tell it to the surgeon; but the husband of the mistress was not the prosecutor:—Held, that as the offence was not an offence against the mistress, she was not a person in such authority that the inducement which she had held out would exclude the confession, which was consequently admissible. *Ib.*

A daughter of the prosecutor (the prisoner's master), but who did not live with her father, and was not the prisoner's mistress, whilst she had temporary charge of the prisoner, who had been previously taken into custody, said to her, "I am sorry for you; you ought to have known better. Tell me the truth, whether you did it or no. Do not run your soul into more sin, but tell the truth;" when the prisoner made a full confession:—Held, that the confession was not made to a person in authority, and was therefore admissible. *Reg. v. Sleeman*, Dears. C. C. 249;

6 Cox, C. C. 245; 2 C. L. R. 129; 23 L. J., M. C. 19; 17 Jur. 1082.

On an indictment for stealing the goods of two persons in partnership, a confession made after an inducement to confess has been held out in their absence by the wife of one of them, who assisted in the management of their business, is inadmissible. *Reg. v. Warringham*, 2 Den. C. C. 417, n.; 15 Jur. 318.

A man and a woman being apprehended on a charge of murder, another woman, who had the female prisoner in custody, told her that she "had better tell the truth, or it would lie upon her, and the man would go free :"—Held, that a declaration of the female prisoner made to this woman afterwards was not receivable. *Reg. v. Enoch*, 5 C. & P. 539.

A female, in custody on a charge of murder, desiring to go to the water-closet, was sent there by the police with a woman, who was impliedly authorized to prevent her escape. When alone together in the closet, the woman, an acquaintance of the prisoner, alluding to the crime said, "How came you to do it?" whereupon she made a statement in the nature of a confession :—Held, that the statement was not induced by any hope or fear caused by a person in authority, and was, therefore, admissible against her. *Reg. v. Vernon*, 12 Cox, C. C. 153.

A woman in custody, on a charge of murder, was, on arriving at the gaol, placed in a room alone with E., in order to be searched. E. was employed as searcher of female prisoners; but, except in that capacity, had no other duties or authority in the gaol. Whilst the usual search was being made, the prisoner said, "I shall be hung, I shall be sure to be hung;" and shortly afterwards, "If I tell the truth, shall I be hung?" E., in order to soothe the prisoner, replied, "No, nonsense, you will not be hung; who told you so?"—Held, that a statement of the prisoner made to E. immediately afterwards was not receivable. *Reg. v. Windsor*, 4 F. & F. 360.

By Persons without Authority.]—There is a difference of opinion among the judges, whether a confession made to a person who has no authority, after an inducement held out by that person, is receivable. *Reg. v. Spencer*, 7 C. & P. 776.

The confession of a prisoner is evidence, although previously to it an inducement to confess had been held out by another person, if that person had no authority to do so. *Reg. v. Gibbons*, 1 C. & P. 97.

So a confession by a prisoner to a constable, who had held out no inducement, is evidence, although an inducement had been previously held out by a person in no office or authority. *Reg. v. Tyler*, 1 C. & P. 129.

Any person's telling a prisoner that it will be better for him to confess, will exclude a confession made to that person, although that person was not in any authority, as prosecutor, constable, or the like. *Reg. v. Dunn*, 4 C. & P. 543; *S. P.*, *Reg. v. Slaughter*, 4 C. & P. 544.

Person in Authority not dissenting from Inducement held out by Another.]—A married woman was apprehended on a charge of felony, and her husband, in the presence of the constable, held out an inducement to her to confess. She then made a statement :—Held, that it was not receivable, as an inducement held out in the

presence of the constable was the same in effect as if it had been held out by him. *Reg. v. Laugher*, 2 C. & K. 225.

The prosecutor and a policeman went into a room in the house of one of the prisoners, in which were assembled the two prisoners and W. The policeman then charged one of the prisoners and W. with stealing the prosecutor's hops, and the other prisoner with feloniously receiving them. W. then said, "Well, John, you had better tell Mr. Walker" (the prosecutor) "the truth." Neither the prosecutor nor the policeman dissented from or remarked upon this advice, but the prisoner John thereupon made a statement amounting to a confession; and subsequently, whilst being conveyed to prison, of his own accord, made a further statement :—Held, that the statements were admissible. *Reg. v. Parker*, L. & C. 42; 8 Cox, C. C. 465; 30 L. J., M. C. 144; 7 Jur., N. S. 586; 4 L. T. 451; 9 W. R. 699.

Where the house of Mr. L. had been on fire, and the prisoner, a female servant there, was sent for into the parlour, where Mr. W., a person not in authority, in the presence of Mrs. L., held out an inducement to the prisoner to confess respecting the fire, Mrs. L. expressing no dissent :—Held, that a confession made after this was not receivable, as the inducement must be taken as if it had been held out by Mrs. L., who was a person in authority over the prisoner. *Reg. v. Taylor*, 8 C. & P. 733.

Upon the trial of an indictment for an unnatural crime with a mare, one of the witnesses, in the presence of T., the owner of the mare, threatened to give the prisoner in charge to the police if he did not tell what business he had in T.'s stable, where the mare was. At that moment the charge had not been made known to the prisoner, but was immediately afterwards, and then he confessed :—Held, that this confession was inadmissible, having been made under the influence of a threat held out to him in the presence of one who, being the owner of the mare, was likely to prosecute for the offence. *Reg. v. Luckhurst*, 6 Cox, C. C. 243; *Dears. C. C.* 245; 2 C. L. R. 129; 23 L. J., M. C. 19; 17 Jur. 1082.

A statement made by one of two prisoners to the other, after an inducement suggested by that other in the presence of the constable in whose custody they are, and uncontradicted by the constable, is inadmissible. *Reg. v. Miller*, 3 Cox, C. C. 507.

Confession relating to another Offence.]—A servant was charged with attempting to set fire to her master's house. It was proved that the furniture in two of the bed-rooms was on fire, and a spoon and other articles were found in the sucker of the pump. The master told the prisoner that if she did not tell the truth about the things found in the pump, he would send for the constable to take her, but he said nothing to her respecting the fire :—Held, that this was such an inducement to confess as would render inadmissible any statement that the prisoner made respecting the fire, as the whole was to be considered as one transaction. *Reg. v. Hearn*, Car. & M. 109.

A. was indicted for stealing a shilling which had been previously marked and put into a till. A constable found the shilling in his possession, and asked him if he had any more money about

him. The prisoner produced some half-crowns, and then made a statement:—Held, that this statement was not receivable, on the ground that it related to another and distinct felony. *Reg. v. Butler*, 2 C. & K. 221.

Inducement to one Prisoner—Confession by Another.]—An inducement or a threat offered by a master to one of two apprentices jointly accused of larceny will not, though offered in the presence of the other, preclude the reception in evidence of a confession immediately made by the other. *Reg. v. Jacobs*, 4 Cox, C. C. 54.

Confession obtained by Fraud.]—Where a prisoner in a gaol on a charge of felony asked the turnkey of the gaol to put a letter in the post for him, and after his promising to do so the prisoner gave him a letter addressed to his father, and the turnkey instead of putting it into the post, transmitted it to the prosecutor:—Held, that the letter was admissible against the prisoner, notwithstanding the manner in which it was obtained. *Rea v. Derrington*, 2 C. & P. 418.

A statement, made by a prisoner when he is drunk, is receivable in evidence; and semble, that if a constable gave him liquor to make him so, in the hope of his saying something, that will not render his statement inadmissible, but it will be matter of observation for the judge in his summing up. *Rea v. Spilsbury*, 7 C. & P. 187.

Previous Caution or Warning by Magistrates.]—The 11 & 12 Vict. c. 42, s. 18, which requires a caution to be given by the magistrate to the prisoner, applies only to the concluding proceedings of the examination; and, therefore, a voluntary statement made by a prisoner in the course of an examination before a magistrate, and before all the witnesses have been examined, is admissible at the trial, although no caution has been given by the magistrate. *Reg. v. Strippa*, Dears. C. C. 648; 23 L. J., M. C. 109; 2 Jur., N. S. 452.

On an examination on a charge of felony before a magistrate, the prisoner was asked if he wished to put any question to a witness against him. Instead of asking anything, he made a statement, which was written down on the depositions, but not signed by the prisoner, who had received no caution:—Held, that this statement was not evidence per se, but that any one who heard the prisoner make it might give evidence of it, refreshing his memory from what was thus written down, but in such a case a prisoner ought to be told that that was not the proper time for him to make a statement. *Reg. v. Watson*, 3 C. & K. 111.

A statement made by a prisoner before a committing magistrate, and signed by the prisoner and the magistrate, if taken in the form prescribed in the schedule to 11 & 12 Vict. c. 42, is admissible in evidence against him at his trial at common law. *Reg. v. Sansome*, 1 Den. C. C. 645; 4 New Sess. Cas. 152; T. & M. 260; 3 C. & K. 332; 4 Cox, C. C. 203; 19 L. J., M. C. 143; 14 Jur. 466.

It will be prudent for justices always to give the prisoner the second caution as well as the first. *Id.*

After taking the examination of the witnesses

on a charge of felony against the prisoner, the magistrate cautioned the prisoner in the language prescribed by 11 & 12 Vict. c. 42, s. 18, but did not, as the proviso to that section requires, tell the prisoner he had nothing to hope from any promise of favour, or to fear from any threat. The prisoner then made a statement, which was taken down, but was not signed by him or the magistrate. The prisoner, after a remand, being brought again before the magistrate, some questions were put to the witnesses by the prisoner's attorney, who then objected to the statement being treated as the prisoner's statement, as an addition had been made to the evidence, and the prisoner being then asked if he wished to make any statement, declined doing so:—Held, that the prisoner's statement was admissible as evidence against him at his trial. *Reg. v. Bond*, 4 New Sess. Cas. 143; T. & M. 242; 1 Den. C. C. 517; 3 C. & K. 337; 4 Cox, C. C. 231; 19 L. J., M. C. 138; 14 Jur. 399.

A statement made by a prisoner before a magistrate, not signed either by the magistrate or the prisoner, is not excluded as evidence because the magistrate omits to inform him that he has nothing to hope or to fear from either promise or threat. *Id.*

Semble, that before a statement made by a prisoner in the presence of, and duly signed by the committing magistrate, can be received in evidence against him, proof must be given that he was cautioned in the manner provided by 11 & 12 Vict. c. 42, s. 18, dehors any declaration to that effect contained in the caption of the statement itself. *Reg. v. Higson*, 2 C. & K. 769.

When a prisoner is willing to make a statement, it is the duty of magistrates to receive it; but magistrates, before they do so, ought entirely to get rid of any impression that may have before been on the prisoner's mind, that the statement may be used for his own benefit; and the prisoner ought also to be told, that what he thinks fit to say will be taken down, and may be used against him on his trial. *Reg. v. Arnold*, 8 C. & P. 621.

A statement of a prisoner is admissible, although he has previously been told that whatever he said "would be used against him." *Reg. v. Chambers*, 4 Cox, C. C. 92.

A prisoner ought to be told by the magistrate that if he makes any statement it may be used as evidence against him, and that he must not expect any favour if he confesses; but the magistrate ought not to dissuade him from confessing. *Rea v. Green*, 5 C. & P. 312.

Where a person, who made a confession to a constable in consequence of a promise held out, was taken before a magistrate, who, knowing what had taken place, cautioned the prisoner against making any confession before him, but the prisoner, notwithstanding, did make a confession to the magistrate:—Held, that this second confession was receivable on the trial of the prisoner, though it did not appear that the magistrate told the prisoner that his first confession would have no effect, and he therefore might have acted under an impression that, having once acknowledged his guilt, it was too late to retract. *Rea v. Howes*, 6 C. & P. 404.

When Inducement continues and renders subsequent Confession Inadmissible.]—A second confession made under the same influence as the first is not receivable. *Meynell's case*, 2 Lewin,

C. C. 122; *S. P., Sherrington's case, Ib.* 123.

The committing magistrate told a prisoner that he would do all that he could for him if he would make a disclosure; after this, the prisoner made a statement to the turnkey of the prison, who held out no inducement to the prisoner to confess:—Held, that what the prisoner said to the turnkey could not be received, more especially as the turnkey had not given the prisoner any caution. *Reg. v. Cooper*, 5 C. & P. 535.

A girl, accused of poisoning, was told by her mistress that if she did not tell all about it that night, a constable would be sent for in the morning to take her before a magistrate; she then made a statement, which was held to be not admissible. Next day a constable was sent for, and as he was taking her to the magistrate, she said something to him, he having held out no inducement to her to do so:—Held, that this was receivable, as the former inducement ceased on her being put into the hands of the constable. *Reg. v. Richards*, 5 C. & P. 318.

A female servant being suspected of stealing money, her mistress, on a Monday, told her that she would forgive her if she told the truth. On the Tuesday she was taken before a magistrate, and was discharged, no one appearing against her. On the Wednesday the superintendent of police went with her mistress to the Bridewell, and told her in the presence of her mistress that she "was not bound to say anything unless she liked, and that if she had anything to say her mistress would hear her;" but the superintendent, not knowing that her mistress had promised to forgive her, did not tell her that if she made a statement it might be given in evidence against her. The prisoner made a statement:—Held, that this statement was not receivable, as the promise of the mistress must be considered as still operating on the prisoner's mind at the time of the statement, but that, if the mistress had not been then present, it might have been otherwise. *Reg. v. Hewitt*, Car. & M. 534.

Admissions by a prisoner, elicited by questions of a police officer, with an admonition to tell all she knew, are inadmissible. But a subsequent statement by the prisoner to another officer is not necessarily so far under the same influence as to exclude it. *Reg. v. Cheverton*, 2 F. & F. 833.

A servant girl was questioned by the mother of a child who had been found dead in a ditch; and she was asked whether she had anything to do with its disappearance; upon which she cried, and said, "If you won't send for the police I will tell the truth," whereupon her mistress replied, "I will not hurt you if you tell the truth; you will be much happier if you tell the truth;" and she promised not to send for the police; whereupon the prisoner made a confession, which upon the trial was rejected as being made under an inducement. It further appeared that shortly after this confession, the mistress sent for a neighbour and informed him of the confession, whereupon he had an interview alone with the prisoner, and asked her questions upon the subject, but he held out no inducement, and she then made a similar confession:—Held, that the second confession was so connected under the circumstances with the first, that it was inadmissible. *Reg. v. Rue*, 13 Cox, C. C. 209; 34 L. T. 400.

The prosecutor, in the presence of the constable, said to the prisoner, "It will be better for you to tell the truth, as it will save the shame of a

search-warrant in your house." The statement was rejected. The constable then took the prisoner into a loft, and, in the absence of the prosecutor, the prisoner made a statement. The evidence was rejected. Half an hour after, the constable took the prisoner to the station-house, and on the way cautioned him not to say anything, after which he made a statement:—Held, to be inadmissible, as the inducement was still operating. *Reg. v. Collier*, 3 Cox, C. C. 57.

b. Other Points relating to Confessions.

Confession Inadmissible—Facts resulting from, may be given in Evidence.—Confessions, obtained in consequence of promises or threats, cannot be given in evidence; but evidence of facts resulting from such inadmissible confessions may be received. *Reg. v. Warwickshall*, 1 Leach, C. C. 263; 2 East, P. C. 658; *S. P., Reg. v. Mosey*, 1 Leach, C. C. 265, n.

Where a prisoner was charged with stealing a guinea and two promissory notes, and the prosecutor told him that it would be better for him to confess:—Held, that after this admonition, the prosecutor might prove that the prisoner brought him a guinea and a 5*l.* note, which he gave up to the prosecutor as the guinea and one of the notes that had been stolen from him. *Reg. v. Griffin*, R. & R. C. C. 152.

When a prisoner's confession had been rejected, the judge would not allow a witness to be asked whether in consequence of the confession, he did a particular thing. *Reg. v. Berriman*, 6 Cox, C. C. 388.

Where anything is found in consequence of a statement made by a prisoner, under circumstances which preclude its being given generally in evidence, such part of it as relates to the thing found in consequence is receivable, and ought to be proved. *Reg. v. Gould*, 9 C. & P. 364.

If a confession is improperly obtained, it is a ground for excluding evidence of the confession, and of any act done by the prisoner in consequence towards discovering the property, unless the property is actually discovered thereby. *Reg. v. Jenkins*, R. & R. C. C. 492.

Confession, when Sufficient to Support Conviction.—A prisoner's confession is sufficient ground for a conviction, although there is no other proof of his having committed the offence, or of the offence having been committed, if that confession was in consequence of a charge against the prisoner. *Reg. v. Eldridge*, R. & R. C. C. 440.

The confession of a prisoner before a magistrate is a sufficient ground to warrant a conviction, although there is no positive proof aliunde that the offence was committed. *Reg. v. White*, R. & R. C. C. 508; *S. P., Reg. v. Tippet*, R. & R. C. C. 509.

Where a knowledge of any fact is obtained by means of a confession which cannot be received, the party should be acquitted; unless the fact would be sufficient to warrant a conviction without any confession leading to it. *Reg. v. Harvey*, 2 East, P. C. 658.

A voluntary confession which enters into minute details of a crime, and states that the prisoner was one of the party concerned in its commission, is evidence to go to a jury when the corpus delicti is proved by evidence aliunde,

although the witness proving such corpus delicti swears that the prisoner was not of the party engaged in the commission of the crime. *Reg. v. Sutcliffe*, 4 Cox, C. C. 270.

— **In Cases of Bigamy.**—*See ante*, BIGAMY.

Proof of Circumstances before Reception.—A person charged with murder made a confession before the coroner. It appeared that, before he made this confession, B., who was both a clergyman and a magistrate, had had an interview with him:—Held, that the prosecutors were not bound to call B. before they put in the confession, but that it would be fair for them to do so; and that if the prosecutors did not call B., the prisoner might call him before the confession was read, to prove that some inducement was held out. *Rea v. Cleves*, 4 C. & P. 221.

A prisoner was in the custody of A., a constable; B., another constable, coming into the room, A. left it, and the prisoner immediately made a confession to B.:—Held, that, if the prisoner was in custody as an accused party, A. must be called to prove that he had held out no inducement to the prisoner to confess, before the confession made to B. is receivable; but if it appears that the prisoner was not then in custody on any charge, but merely detained as an unwilling witness, it will not be necessary to call A. *Rea v. Swatkins*, 4 C. & P. 548.

In order to render a confession by a prisoner admissible, the prosecution must shew affirmatively, to the satisfaction of the judge, that it has not been made under the influence of an improper inducement; if this appears doubtful on the evidence the confession ought to be rejected. *Reg. v. Warringham*, 2 Den. C. C. 447, n.; 15 Jur. 318.

At the trial of a servant for attempting to poison her mistress, a medical man having denied that he had held out any inducement to the prisoner to confess, gave evidence of a confession, without which the prisoner could not have been convicted. Evidence was then given that before she made her confession he had said to her, in the presence of her mistress, "It will be better for you to tell the truth." The medical man was recalled, but did not admit this, and the judge left the evidence, including the confession, to the jury, but reported, that if the evidence had been given in the first instance he should have excluded the confession:—Held, that the confession ought to have been struck out, and that the conviction was wrong. *Reg. v. Garner*, 3 New Sess. Cas. 329; 1 Den. C. C. 329; T. & M. 7; 2 C. & K. 920; 3 Cox, C. C. 175; 18 L. J., M. C. 1; 12 Jur. 944. *S. P., Reg. v. Boswell*, Car. & M. 584.

To render a confession admissible, it is not so much material to prove to whom or when it is made, as it is to ascertain the mind of the person making it, and see whether or not it is probable that it was made voluntarily. *Reg. v. Rue*, 13 Cox, C. C. 209; 34 L. T. 400.

c. Admissions other than Confessions.

In Private Conversations.—What a prisoner is overheard to say to his wife, or even what he is overheard to say to himself, is receivable against him on a charge of felony; it is, however, a species of evidence to be acted on with caution, as it is very liable to be unintentionally misrepresented by the witnesses. *Rea v. Simons*, 6 C. & P. 540.

A conversation between the prisoner and his mother, in which she made a statement to his prejudice, which he denied, is not admissible against him. *Reg. v. Welsh*, 3 F. & F. 275.

But a conversation between two persons in relation to the charge under investigation, made in the presence of the prosecutrix, but in the absence of the prisoner, was admitted. *Reg. v. Arnall*, 8 Cox, C. C. 439.

If a witness gives evidence of a conversation with a prisoner, in which that prisoner says something implicating another prisoner, the witness, in giving his evidence, must not omit the name of such other prisoner, and say "another person," but must give the conversation exactly as it occurred, and the judge will tell the jury that is not evidence against such other prisoner. *Rea v. Hearne*, 4 C. & P. 215; *S. P., Rea v. Walkely*, 6 C. & P. 175.

By Wife, in Presence and Hearing of Prisoner.]

—What the wife of a person charged with felony says in his presence and hearing is admissible on the trial. *Rea v. Bartlett*, 7 C. & P. 671.

Before Suspicion attaches to Prisoner.]—A statement made by a prisoner before suspicion attaches to him, and before search made, in order to account for his possession of property, which he is afterwards charged with having stolen, is admissible as evidence for him. *Reg. v. Abraham*, 3 Cox, C. C. 434; 2 C. & K. 550.

Statement not Denied by Prisoner.]—The court will not exclude a statement made in the prisoner's presence by another party to a third person, merely because some inducement has been held out to that party to make it; but very little weight ought to be attached to the fact of no answer being given to such statement by the prisoner, as he would not know whether it would be better for him to be silent or not. *Reg. v. Jankowski*, 10 Cox, C. C. 365.

Sufficiency.]—A prisoner, indicted for stealing two heifers, said, "I drove away two heifers from 'the World's End Dolver'" (i. e., Fen). The prosecutor's farm was called by that name, but he could not swear that there was not any other of the same name in the neighbourhood:—Held, insufficient to warrant a conviction. *Rea v. Triggs*, 5 C. & P. 167.

Statement Made after being Sworn.]—A prisoner before a magistrate was sworn by mistake, but the deposition was afterwards destroyed and the prisoner cautioned. After this he made a statement:—Held, admissible. *Rea v. Webb*, 4 C. & P. 564.

Depositions of Prisoner, when Evidence against Himself.]—*See post*, DEPOSITIONS.

Admissibility for and against Prisoner.]—If the declaration of the prisoner, in which she asserts her innocence, is given in evidence on the part of the prosecution, and there is evidence of other statements confessing guilt, the judge will leave the whole of the conflicting statements to the jury for their consideration; but if there is in the whole case no evidence but what is compatible with the assertion of innocence so given in evidence for the prosecution, the judge will direct an acquittal. *Rea v. Jones*, 2 C. & P. 629.

If a prosecutor proves in evidence a declara-

tion made by a prisoner, it becomes evidence for the prisoner as well as against him, but like all other evidence, the jury may give credit to one part of it and not to another. *Reg. v. Higgins*, 3 C. & P. 603.

If a prosecutor gives in evidence a declaration made by a prisoner exculpatory of himself, the jury is not bound to take this to be true merely because the prosecutor gives it in evidence; but they ought to consider how far it is consistent with the rest of the evidence, and whether they believe it to be really true. *Reg. v. Steptoe*, 4 C. & P. 397.

In an indictment for highway robbery, accompanied by violence, witnesses were called for the prisoner, to shew that he had received certain marks of blood on his coat before the robbery:—Held, that it was competent to the prosecution to put in the prisoner's statement before the magistrate, wherein he gave a different account of the same matter. *Reg. v. White*, 2 Cox, C. C. 192.

An incidental observation made by a prisoner in the course of his examination before a magistrate, which is not taken down as part of the prisoner's statement, is not admissible in evidence against him at the trial if it relates to any matter which formed part of the judicial inquiry then being conducted before the magistrate. *Reg. v. Carpenter*, 2 Cox, C. C. 228.

Answers to Questions on Examination before Magistrates.—An examination of a prisoner charged with a felony taken without threat or promise, by questions put by the magistrate, is notwithstanding admissible. *Reg. v. Ellis*, R. & M. 432; *S. P.*, *Reg. v. Bartlett*, 7 C. & P. 832.

On Interrogations by the Police.—The practice of questioning prisoners by policemen, and thus extracting confessions from them, though it does not render the evidence so obtained inadmissible, is one which is strongly reprehensible, and which ought not to be permitted. *Reg. v. Mick*, 3 F. & F. 822.

An answer by a prisoner after his arrest, to a question asked by a policeman, is inadmissible. *Reg. v. Bodkin*, 9 Cox, C. C. 403.

A policeman ought not, in general, to question prisoners who are in his custody; but if he does, the interrogation ought not to be confined to questions calculated to compromise the party. *Reg. v. Stokes*, 17 Jur. 192.

J., suspected of having committed felony, was followed and stopped by a constable in plain clothes. The constable having told J. what he was, and that she (J.) was charged with felony, proceeded to put several questions to her relative to a parcel in her hand, which contained the goods supposed to have been stolen. At the time he asked the questions the constable had not told J. that she was under arrest, but he would not let her go. He did not expressly hold out any threat or inducement to J., nor did he, before she answered him, give her any caution. J. having answered the questions, the constable then told her she was not bound to say anything that would criminate herself, and said he should bring her to the police office:—Held, that the conversation between J. and the constable was receivable in evidence. *Reg. v. Johnston*, 15 Ir. C. L. R. 60.

Where there is no clear evidence of an offence having been committed, a police officer is not

justified, in consequence of mere rumours in a neighbourhood, in putting searching questions to a person for the purpose of eliciting the proof of a crime, as well as of that person's connexion with it. *Reg. v. Berriman*, 6 Cox, C. C. 388.

A confession obtained without threat or promise from a boy fourteen years old, by questions put by a police officer in whose custody the boy was on a charge of felony, and when he had had no food for nearly a whole day, is rightly received. *Reg. v. Thornton*, 1 M. C. C. 27.

Previous Warning by Police.—Though there may be cases in which it will be proper, yet, as a general rule, it is better that a policeman should not question a prisoner in his custody, without cautioning him that his answers will be evidence against him. *Reg. v. Kerr*, 8 C. & P. 177.

Where a police constable, who apprehended the prisoner, having told him the nature of the charge, said "he need not say anything to criminate himself; what he did say would be taken down and used as evidence against him;" and the prisoner thereupon made a confession:—Held, receivable. *Reg. v. Baldry*, 2 Den. C. C. 430; 21 L. J., M. C. 130; 16 Jur. 599; 19 L. T., O. S. 146.

A constable ought not to caution a prisoner not to say anything. A constable is not to lead a prisoner to say anything; but if a prisoner chooses to say something, it is the duty of the constable to hear what it is he has to say. *Reg. v. Priest*, 2 Cox, C. C. 378.

Admissibility of, against Fellow Prisoner.—Where A. and B. were charged with the joint commission of a felony, and A., on his examination before a magistrate, stated, in the hearing of B., that he and B. jointly committed such felony, which B. did not deny:—Held, that these circumstances were not admissible as evidence against B. *Reg. v. Appleby*, 3 Stark. 33; *S. P.*, *Reg. v. Hearne*, 4 C. & P. 215.

If two are taken before a magistrate on a charge of felony, what the first says in his statement before the magistrate cannot be given in evidence against the second, because when before the magistrate the second is only called upon to answer the statement in the depositions on oath, and not what any other prisoner may have said on his examination. *Reg. v. Swinnerton*, Car. & M. 593.

d. Proof of.

Made before Magistrates—Confession Written and Signed.—On the trial of a prisoner who has made before a magistrate a voluntary confession of his guilt, previously to the conclusion of the evidence against him, which confession is taken down in writing, and signed by the prisoner, and attested by the magistrate's clerk, the proper course is for the clerk to give evidence of the prisoner's statements, refreshing his memory by the written paper. *Reg. v. Bell*, 5 C. & P. 162.

A prisoner charged with felony made a statement before the committing magistrate, which was taken down and signed by the prisoner, but there was nothing on the face of the paper to shew that at the time the prisoner made the statement he was under examination on a charge of felony:—Held, that this examination could not be used as such, but that the clerk to the magistrate might state what the prisoner said,

using the paper to refresh his memory. *Rea v. Tarrant*, 6 C. & P. 182.

— **When unsigned by Prisoner.**—A magistrate may give evidence of what a prisoner said at examinations before him, although much of what he said was in answer to questions put by the magistrate, no threat or promise being used, and although the prisoner had refused to sign the magistrate's notes of the examination, on the ground that they were an incorrect account of the transaction. *Rea v. Jones*, Car. C. L. 13.

And the magistrate may refresh his memory from the notes. *Ib.*

A voluntary confession of felony made by a prisoner on his examination before a magistrate, and reduced by the magistrate into writing, may be given in evidence on the trial, though the magistrate has neglected, and the prisoner has refused, to sign it. *Rea v. Lambe*, 2 Leach, C. C. 552.

A prisoner charged with felony made a statement before the committing magistrate, which was taken down in writing, but not signed by the prisoner:—Held, that the magistrate's clerk might give evidence of what the prisoner said, using that which was taken down to refresh his memory. *Rea v. Pressly*, 6 C. & P. 183; *S. P.*, *Reg. v. Watson*, 3 C. & K. 111.

After the examination of a prisoner before a magistrate on a charge of felony had been taken down and read over to him, and he was told that he might sign it or not, but he declined to do so:—Held, that it could not be read in evidence against him. *Rea v. Telicote*, 2 Stark, 483.

— **How Proved.**—It is not necessary to call either the magistrate or his clerk to prove the due taking in writing of a prisoner's confession. *Rea v. Hopes*, 7 C. & P. 136.

A prisoner's statement, on his examination before a magistrate, may be given in evidence (if neither the magistrate nor his clerk is in court), on proof by a witness who was at the examination of the handwriting of the magistrate to the depositions returned to the court, and also that it was taken down in writing, and read over to the prisoner. *Rea v. Reading*, 7 C. & P. 649; *S. P.*, *Rea v. Rees*, 7 C. & P. 568; *S. P.*, *Rea v. Chappel*, 1 M. & Rob. 395.

Where a prisoner sent for a magistrate to make a statement to him, and the magistrate took down the conversation which passed between him and the prisoner, and wrote it immediately under the usual heading of a prisoner's statement, and read this over to the prisoner before the prisoner signed his statement which followed it, the judge directed this memorandum of the conversation to be read before he decided on the admissibility of the statement, instead of the magistrate stating orally what passed between him and the prisoner. *Reg. v. Dingley*, 1 C. & K. 637.

The prosecutor proved that when the prisoner was before the magistrate, she was duly cautioned and that she made a statement, which was taken down and read over to her, and to which she made her mark, the magistrate also signing it. The prosecutor identified the paper by his own signature to his own deposition, being on the same sheet of paper:—Held, that the prisoner's statement might be given in evidence without examining either the magistrate or his clerk. *Reg. v. Hearn*, Car. & M. 109.

Where a magistrate has signed the examination

of a prisoner under 7 Geo. 4, c. 64, in order to allow it to be read on the trial, it is sufficient to prove the handwriting of the magistrate, and to shew that the examination is that of the particular prisoner. *Rea v. Foster*, 7 C. & P. 148.

Minutes taken by the solicitor for a prosecution, on the examination of a prisoner before a magistrate, and by his direction, may be read in evidence at the trial, though not signed either by the prisoner or the magistrate. *Rea v. Thomas*, 2 Leach, C. C. 637; *S. P.*, *Rea v. Bradbury*, 2 Leach, C. C. 639, n.

— **Purporting to have been Made on Oath.**]

—If a prisoner's examination before a magistrate concludes "taken and sworn before me," and under that is the magistrate's signature, it is not receivable; and the judge will neither allow the magistrate's clerk to prove that, in fact, it was not sworn, nor will he receive parol evidence of what the prisoner said. *Rea v. Rivers*, 7 C. & P. 177.

Where a magistrate returns with the depositions, that a prisoner was sworn and made a statement, the statement cannot be received in evidence against him, although a witness states that he was not in fact sworn. *Reg. v. Pikesley*, 9 C. & P. 124.

A party, who was charged with a murder, made a statement before the coroner at the inquest, which was taken down. The paper purporting that the statement was made on oath:—Held, that, on the trial of the party for murder, this statement was not receivable; and that parol evidence was not admissible to shew that no oath in fact had been administered to the prisoner. *Reg. v. Wheeley*, 8 C. & P. 230.

— **Explanation by Parol Evidence.**]

Where, on the examination before the magistrate of persons charged with felony, the magistrate's clerk, in taking down the prisoners' statements, had left a blank where either of the prisoners had mentioned the name of another of the prisoners, the judge at the trial would not allow these blanks to be supplied by parol evidence. *Reg. v. Morse*, 8 C. & P. 605.

A prisoner before the committing magistrate made a statement, which by mistake was written in the information book, and headed "The information and complaint of R. B.:"—Held, that it was not receivable, although the mistake could have been explained by the magistrate's clerk. *Rea v. Bentley*, 6 C. & P. 148.

— **Addition to by Parol Evidence.**]

Parol evidence may be given to add to the written examination of a prisoner taken by a magistrate. *Rea v. Harris*, 1 M. C. C. 338.

It is not necessary to be clearly shewn that statements, made by a prisoner on his examination before a magistrate, were reduced to writing, in order to exclude parol evidence of such statements. *Reg. v. McGovern*, 5 Cox, C. C. 506.

If a prisoner, during the examination of witnesses against him before the magistrate, makes an observation, parol evidence may be given of such observation, if the magistrate's clerk proves that he only took down the evidence of the witnesses and the statement of the prisoner, after the evidence against him was concluded. *Rea v. Spilsbury*, 7 C. & P. 187.

The magistrate returned at the end of the depositions against a prisoner in a case of felony—

"The prisoner being advised by his attorney, declines to say anything." It appeared at the trial, that the depositions had been taken and signed by the witnesses on the 14th of November; but that, on the 10th of November, minutes had been taken of the evidence, and the prisoner had made a statement, which was taken down in writing by the magistrate's clerk:—Held, that this statement might be proved on the part of the prosecution by the clerk who took it down; as, whatever a prisoner has said is evidence, though the magistrate may have neglected his duty in not returning it with the depositions. *Reg. v. Wilkinson*, 8 C. & P. 662.

A magistrate returned with the depositions taken before him, that the prisoner said, "I decline to say anything."—Held, that a witness for the prosecution could not be allowed to give evidence of the terms of a confession, which he stated the prisoner made in the presence of the magistrate, and while under examination. *Reg. v. Walter*, 7 C. & P. 267.

A prisoner being under examination before a magistrate on a charge of felony, a statement was made in his presence by the solicitor for the prosecution, which the witness called to prove it said he believed had been taken down in writing:—Held, that parol evidence of the statement was not admissible on the trial of such prisoner. *Reg. v. Hollingshead*, 4 C. & P. 242.

It is to be presumed that what is stated on oath before a magistrate is taken down in writing, and therefore parol evidence of such a statement is not receivable, unless it is first shewn that it was not so taken down. *Phillips v. Winburn*, 4 C. & P. 273.

Parol Evidence when nothing Written.]—A. gave a mortal blow to B. his master, who took out a warrant against A. for an assault. The charge of assault was heard under this warrant before Mr. D. and another magistrate, who summarily convicted A. of the assault. What was said by A. and B. before the magistrates was not taken down in writing. B. died:—Held, that on the trial of A. for the murder of B., Mr. D. might give evidence of what B. said in the presence of A. at the hearing before the magistrates of the charge of assault, and of what A. said in answer to it. *Reg. v. Edmunds*, 6 C. & P. 164.

Depositions referred to may be Read.]—If a prisoner, when examined before a magistrate, says that the deposition of F. T. is true, the deposition of F. T. may be read at the trial as a part of the prisoner's statement, although F. T. has been examined at the trial as a witness for the prosecution. *Reg. v. John*, 7 C. & P. 324.

Confession to Police Constable.]—If a prisoner makes a confession to a constable, who takes down what he says, and the prisoner signs it, this paper will be read by the officer of the court. *Reg. v. Swatkins*, 4 C. & P. 548.

Statement of Prisoner at Coroner's Inquest.]—Written notes made by the coroner of a statement made in his presence during an inquest by the prisoner may be used by him at the trial, in order to refresh his memory as to what that statement was. *Reg. v. Wiggins*, 10 Cox, C. C. 562.

The reading of such notes does not entitle the

prisoner to have the depositions of other witnesses taken in the course of the same inquest read. *Id.*

Where the examination of a prisoner by a coroner was inadmissible on account of an irregularity in the mode of taking it, the coroner was allowed to give parol evidence of what the prisoner said on the occasion of his examination. *Reg. v. Reed*, M. & M. 403.

2. DEPOSITIONS.

a. Form and Contents.

Person of Weak Intellect—Question and Answer.]—It would be always desirable, when a person of weak intellect is examined before a magistrate in a felony, that the magistrate's clerk should take down in the depositions the questions put by the magistrate, and the answers given by the witness as to the witness's capacity to take an oath. *Reg. v. Painter*, 2 C. & K. 319; 2 Cox, C. C. 244.

Everything that is Material should be Included.]—Everything that occurs before a magistrate, on the examination of a person on a charge of felony, should be taken down in the depositions, if it is material. *Reg. v. Weller*, 2 C. & K. 223.

Where, during the examination of a witness before a magistrate in support of a charge of felony, the prisoner interposes an observation which is material, such observation should be taken down in the depositions; and if it is not, the judge at the trial will not allow any evidence of it to be given. *Id.*

A magistrate is not bound by law to return all that is stated by the witnesses on a charge of felony, but only all that is material to the case; and though, since the act allowing a prisoner a copy of the depositions, they ought to contain what was stated, that he may know what he has to answer, there is a difference between a witness at the trial adding to his deposition, and his contradicting it. *Reg. v. Coveney*, 7 C. & P. 667; *S. P.*, *Reg. v. Thomas*, 7 C. & P. 817.

The magistrate ought to return all that was said by the witnesses with respect to the charge, as the object of the legislature was to enable prisoners to know what they have to answer on their trial. *Reg. v. Grady*, 7 C. & P. 650.

A., who was a witness for the prosecution against B. on a charge of arson, had first been examined by the magistrate before any specific charge was made against any person, and his deposition taken in writing. A. was next accused of the offence, and his statement as a prisoner was also taken down by the magistrate. After this, B. was charged with the offence, and A. examined as a witness, when A.'s statement made at that time was taken down, B. being then committed for trial:—Held, that all these statements of A. ought to be returned to the judge, and not merely the statement made when B. was committed. *Reg. v. Simons*, 6 C. & P. 540.

It is the duty of a magistrate to return to the judge, not only the depositions of witnesses, but also any confession taken down as made by the prisoner; and it is no excuse for not doing so, that the confession was wanted to be sent before the grand jury. *Reg. v. Fallows*, 5 C. & P. 508; *S. P.*, *Reg. v. Fuller*, 7 C. & P. 269.

Regular on Face.—The deposition of a witness absent from illness, to be admissible must be regular, and appear to have been regularly taken upon the face thereof, and cannot be proved by extraneous evidence to have been properly taken in fact. *Reg. v. Miller*, 4 Cox, C. C. 166.

Of Marksman.—To the deposition of a marksman, the magistrates' clerk attached the prisoner's name, so that it appeared to have been signed by the prisoner's mark:—Held, that the deposition was properly received in evidence against him. *Reg. v. Mullen*, 9 Cox, C. C. 339.

Caption, Form of.—The title or caption of the written deposition of a witness, taken before a committing magistrate, need state no more than that it is the deposition of the witness, and that the examination had reference to the particular charge upon which the prisoner is being tried. *Reg. v. Langridge or Langbridge*, T. & M. 146; 1 Den. C. C. 448; 3 Cox, C. C. 465; 3 New Sess. Cas. 645; 2 C. & K. 975; 18 L. J., M. C. 198; 13 Jur. 545.

In order to make the deposition of a deceased witness admissible against a prisoner charged with felony, such deposition need not have a separate caption. If there is a caption at the head of the body of depositions taken in the case, that is sufficient. *Reg. v. Johnson*, 2 C. & K. 355.

In felony the depositions had one caption which mentioned the names of all the witnesses, and at the end had one jurat which also contained the names of all the witnesses, and to which was the signature of the magistrate, and each witness signed his own deposition:—Held, to be correct. *Reg. v. Young*, 3 C. & K. 106.

— **Deposition of Deceased Person attached to.**—An examination of a man touching injuries which he has received from the prisoner, if, subsequently on the death of the injured man from the injuries he has received, appended to a caption, charging the prisoner with his murder, is inadmissible on that charge, although it may be admissible as a dying declaration. *Reg. v. Clarke*, 2 F. & F. 2.

A woman having had a rape committed upon her by two, the next day, in distress of mind, cut her throat, and being likely to die, a magistrate was sent for, and, in the presence of the prisoners, her deposition was properly taken. She was told she was likely to die, and she died a few days afterwards. Subsequently other witnesses gave evidence against the prisoners before a different magistrate, and to these latter depositions the deposition of the deceased was attached, without any separate caption:—Held, that the deposition of the deceased, having no caption shewing on what charge it was taken, was inadmissible; nor was it admissible as a dying declaration, as it did not relate to the offence which caused the death. *Reg. v. Newton*, 1 F. & F. 641.

Signing by Magistrates or Coroners.—It is not necessary that each deposition should be signed by the justice taking it; and therefore where a number of depositions taken at the same hearing on several sheets of paper were fastened together and signed by the justice taking them, once only at the end of all the depositions in the

form given in schedule M. to the 11 & 12 Vict. c. 42, one of these depositions will be admissible after the death of the witness making it, although no part of it is on the sheet signed by the justice. *Reg. v. Parker*, 1 L. R., C. C. 225; 39 L. J., M. C. 60; 21 L. T., 724; 18 W. R. 353; *S. P.*, *Reg. v. Carroll*, 11 Cox, C. C. 322.

It was proved by the magistrate's clerk, that the deposition of a prosecutor was taken before the magistrate, in the presence of the prisoner, who had a full opportunity of cross-examining. The deposition was taken on the same sheet of paper with those of the other witnesses, and at the end of that last deposition were the words, "Sworn before me," and the magistrate's signature. The prosecutor had died before the trial:—Held, that, on the above facts being proved, the deposition was receivable on the trial, although the magistrate had not put his signature to this particular deposition. *Reg. v. Osborne*, 8 C. & P. 113.

It is the duty of the magistrate to complete and sign the depositions as soon as they are taken. *Fletcher, Ex parte*, 1 New Sess. Cas. 40; 1 D. & L. 996; 13 L. J., M. C. 67; 8 Jur. 269; *S. C.*, nom. *Reg. v. London (Mayor)*, D. & M. 486; 5 Q. B. 555.

A magistrate must sign a deposition of a witness at the foot of such deposition. *Reg. v. Richards*, 4 F. & F. 860.

Depositions taken before the coroner on an inquisition of murder, cannot be read in evidence on the trial of the indictment, though the deponents are dead, if they are not signed by the coroner, or, if signed, his handwriting cannot be proved. *Rea v. England*, 2 Leach, C. C. 770.

Statement of Prisoner, when made.—If a prisoner is brought before a magistrate, his statement ought not to be taken till the evidence against him is gone through, and he should then be asked if he has anything to say in answer to the charge. *Rea v. Fagg*, 4 C. & P. 566.

b. Duties of Magistrates.

What Witnesses to be Bound over.—In a case of felony the committing magistrate is not bound to bind over all the witnesses who have been examined before him in support of the charge, but only those whose evidence is material to the charge; but it is very desirable that all that has been given in evidence before the magistrate should be transmitted to the judge. *Reg. v. Smith*, 2 C. & K. 207.

Witnesses for Prisoner.—By 30 & 31 Vict. c. 35, ss. 1, 2, 3, *depositions of witnesses for prisoner are to be taken, and witnesses bound by recognizances for prisoner are to be allowed their expenses.*

Where a prisoner charged with felony has witnesses in attendance at the time of the examination before the magistrate, Lord Denman, C. J., recommended that they should be then examined, if the prisoner wishes it, and if their evidence is believed, and answers the charge, no further proceedings need be taken. *Anon.*, 2 C. & K. 845.

But if these witnesses contradict those for the prosecution in material points, the cases should be sent to a jury, and the depositions of the prisoner's

witnesses should be taken, and signed by them, and transmitted to the judge, together with the depositions in support of the charge. *Ib.*

Completing Depositions.]—It is the duty of the magistrate to complete the depositions as soon as they are taken. *Fletcher, Ex parte*, 1 New Sess. Cas. 40; 1 D. & L. 996; 13 L. J., M. C. 67; 8 Jur. 269; *S. C.*, nom. *Reg. v. London (Mayor)*, D. & M. 486; 5 Q. B. 555.

c. When Admissible in Evidence.

On another Charge against Prisoner.]—A deposition properly taken under 11 & 12 Vict. c. 42, before a magistrate, against a prisoner on a charge of assault, is not receivable in evidence against him on a trial for feloniously wounding, although on both charges the transaction is the same, and the witness is too ill to attend the trial for the felony. *Reg. v. Ledbetter*, 3 C. & K. 108.

Such a deposition is only receivable in evidence where the indictment is for the same identical offence as that charged before the justice, and upon which such deposition was taken. *Ib.*

A. was charged before a magistrate with wounding B. with intent to do him grievous bodily harm, and B.'s deposition was taken. B. afterwards died of the wound, and A. was indicted for his murder:—Held, that on the trial for murder the deposition might be read in evidence; as although it was not on the same technical charge, it was taken in the same case, and A. had full opportunity of cross-examination. *Reg. v. Beeston*, Dears. C. C. 405; 3 C. L. R. 82; 24 L. J., M. C. 5; 18 Jur. 1058.

In order to prove malice or motive against the accused, the deposition of the deceased against him, taken before the magistrates on another charge, and for which he was afterwards convicted, was tendered in evidence, and it was admitted. *Reg. v. Buckley*, 13 Cox, C. C. 293.

When a person is charged before magistrates with obtaining money by false pretences and afterwards indicted for uttering a forged promissory note, the charges arising out of one and the same transaction, and being in fact identical:—Held, that the deposition of a witness taken at such hearing is admissible on the trial for uttering the forged note. *Reg. v. Williams*, 12 Cox, C. C. 101.

The rule that the written deposition taken under 7 Geo. 4, c. 64, s. 3, was the evidence of what had been stated by a witness before a magistrate on a charge of misdemeanor, was not limited to the individual case, with the view to which the evidence was taken down, but extended to all subsequent proceedings, civil as well as criminal. *Leach v. Simpson*, 5 M. & W. 309; 7 D. P. C. 513; 3 Jur. 654.

Before Grand Jury.]—Depositions of a witness so ill as to be unable to travel, are admissible in evidence before the grand jury. *Reg. v. Clements*, 2 Den. C. C. 251; T. & M. 579; 5 Cox, C. C. 191; 20 L. J., M. C. 193; 15 Jur. 407.

Proof of Illness of Witness.]—The deposition of a witness who has travelled to an assize town, but is too ill to attend court for examination, may be read before the grand jury, after the illness of the witness and the due taking of the deposition have been proved to the

satisfaction of the judge. *Reg. v. Wilson*, 12 Cox, C. C. 622.

It is not essential that proof of the deposition having been duly taken should be given by the clerk to the committing magistrate. *Ib.*

When a witness is unable to attend a trial through illness, his deposition may be presented to the grand jury without any preliminary proof that the witness is ill and that such deposition was regularly taken. In such case the grand jury should be told that the court permits them to look at the deposition, and to act upon it if they think proper. *Reg. v. Gerrans*, 34 L. T. 145; 13 Cox, C. C. 138.

Upon a bill of indictment being presented, the grand jury made an application for the deposition of an absent witness:—Held, that the grand jury were entitled to peruse the deposition without formal proof that the witness was too ill to travel. *Reg. v. Bullard*, 12 Cox, C. C. 333.

Depositions of an absent witness are not admissible before the grand jury without medical evidence of his illness. *Reg. v. Philips*, 1 F. & F. 105.

Refusal to give Evidence.]—A material witness refused to give any evidence whatever to the grand jury:—Held, that the grand jury could not read the deposition of such witness as evidence, to enable them to find a bill. *Reg. v. Rendle*, 11 Cox, C. C. 209.

Of Prisoner taken in another Matter—On what Principle admitted.]—By an act of the Quebec Legislature, officers called "fire marshals" are appointed with power to inquire into the origin of fires in Quebec and Montreal, and for that purpose to examine persons on oath. Upon an inquiry, held in pursuance of this statute, as to the origin of a fire in a warehouse occupied by the prisoner, he was examined on oath as a witness. No caution was given to him that his evidence might be used against him. At the time of such examination there was no charge against him or any other person. Subsequently he was tried for arson of the warehouse, and his depositions made at the inquiry before the fire marshals were admitted as evidence against him:—Held, that the depositions were properly admitted. *Reg. v. Coote*, 4 L. R., P. C. 599; 42 L. J., M. C. 45; 29 L. T. 111; 21 W. R. 553; 9 Moore, P. C. C., N. S. 463.

The depositions on oath of a witness legally taken are evidence against him, should he be subsequently tried on a criminal charge, except so much of them as consists of answers to questions to which he has objected as tending to criminate him, but which he has been improperly compelled to answer. The exception depends upon the principle "*Nemo tenetur seipsum accusare*," but does not apply to answers given without objection, which are to be deemed voluntary. *Ib.*

When Receivable.]—On a trial for murder, the deposition on oath of the prisoner, taken before the coroner on the inquest held on the body of the deceased, is not receivable in evidence. *Reg. v. Owen*, 9 C. & P. 238.

A. was charged with forgery, and B. was examined on oath before the magistrate as a witness against A.; after this B. was himself

charged with a different forgery:—Held, that the deposition of B. was evidence against him on his trial for the forgery, notwithstanding it was taken on oath. *Reg. v. Haworth*, 4 C. & P. 254.

The examination of a person taken on oath as a witness before commissioners of bankruptcy, is admissible against him on a charge of forgery, he having been cautioned and allowed to elect what questions he would answer. *Reg. v. Wheeler*, 2 Lewin, C. C. 157; 2 M. C. C. 45.

On a charge of threatening to accuse of an infamous crime, it appeared that one prisoner had made a charge against the prosecutor of endeavouring to excite another prisoner to the commission of an unnatural offence:—Held, that the depositions of the prisoners upon that occasion were admissible against them. *Reg. v. Braynell*, 3 Cox, C. C. 402.

When before the magistrate the prisoners were separately cross-examined as to their being together on the day when the offence was alleged to have been committed, how they had been occupied, etc., and their answers were so contradictory in themselves and so inconsistent with each other, that the magistrate dismissed the charge against the then defendant, and bound him over to prosecute the prisoner for endeavouring to extort money by threats:—Held, that the answers elicited on such cross-examination were not admissible. *Id.*

Several persons, one of whom was the prisoner, were summoned before the committing magistrate touching the poisoning of A. No person was then specifically charged with the offence. The prisoner was sworn, and made a statement:—Held, that this statement was not receivable. *Reg. v. Davis*, 6 C. & P. 161.

When before the committing magistrate one of the prisoners was examined as a witness against the other:—Held, that what that prisoner said before the magistrate could not be given in evidence on the trial. *Reg. v. Davis*, 6 C. & P. 177.

A statement relating to an offence, made upon oath by a person not at the time under suspicion, is admissible against him, if he is afterwards charged with the commission of it. *Reg. v. Tubby*, 5 C. & P. 530.

The deposition of a prisoner at a coroner's inquest, after a caution from the coroner, may be read. *Reg. v. Colmer*, 9 Cox, C. C. 506.

Deposition of a witness taken before magistrates allowed to be read at the trial as evidence against him, although after his evidence was taken the magistrates committed him for trial, his evidence criminating himself. *Reg. v. Chidley*, 8 Cox, C. C. 365.

Upon a trial for manslaughter the prisoner's deposition on oath, taken by the coroner upon the inquest, is admissible against him. *Reg. v. Bateman*, 4 F. & F. 1064.

Depositions of Prisoner Destroyed—Caution.]—A prisoner, when before the committing magistrate, was sworn by mistake, he being supposed to be a witness; as soon as the mistake was discovered, the deposition which was begun was destroyed and the prisoner cautioned. After this he made a statement:—Held, that such statement was receivable. *Reg. v. Webb*, 4 C. & P. 564.

Taken before different Magistrates from Magistrate Committing for Trial.]—A deposition taken by virtue of 11 & 12 Vict. c. 42, s. 17, may

be read in evidence against a prisoner, although taken before two magistrates who acted only upon that occasion, and the prisoner was afterwards committed for trial by another magistrate. *Reg. v. De Villi*, 9 Cox, C. C. 4.

Must be Taken in Presence of Magistrate and Prisoner.]—On a charge of felony, the witnesses who make the depositions on which the prisoner is committed should be examined in the prisoner's presence, and he should hear all the questions put and answered; and if the magistrate's clerk, before the arrival of the magistrates and of the prisoner, examines the witnesses and takes down what they state, and when the magistrates and prisoner arrive the depositions so taken are read over to the witnesses in the presence of the magistrates and the prisoner, and the latter is asked whether he has any question to put to any of them, this is wrong. *Reg. v. Johnson*, 2 C. & K. 394.

In order to render depositions taken before a magistrate admissible in evidence upon the trial of a prisoner, they must be taken in his presence and in that of the magistrate, and the prisoner must have an opportunity of cross-examining the witnesses in the presence of the magistrate. *Reg. v. Watts*, L. & C. 339; 9 Cox, C. C. 395; 33 L. J., M. C. 63; 9 L. T. 453; 12 W. R. 112.

A deposition of a deceased witness partly taken from the examination of the witness in the presence of the party accused on a previous day, and not then read over, but read over on a subsequent examination of the witness in the presence of the party accused, the witness then being further examined, and cross-examined on behalf of the party accused, and the notes of the magistrates' clerk of the whole being subsequently fairly copied in an adjoining room, and then read over to the witness in the presence of the party accused, and signed by the witness and the magistrate, is admissible. *Reg. v. Bates*, 2 F. & F. 317.

The depositions of a deceased witness, though not taken wholly in the prisoner's presence, are admissible, if the party was resworn, and the depositions read and signed in his presence. *Reg. v. Smith*, 2 Stark, 208; Holt, 614; R. & R. C. C. 339. See *Reg. v. Walsh*, 5 Cox, C. C. 115.

But a deposition not taken in his presence will be rejected. *Reg. v. Rigg*, 4 F. & F. 1085.

Taken after Notice to Accused.]—Q. was charged on an indictment with the wilful murder of his wife. The injuries which resulted in her death were inflicted by the prisoner on the 18th December, 1867; she died on the 23rd December; but the prisoner was not taken into custody till the 3rd January, 1868. On the 22nd December, 1867 (the day before she died) she being then in the hospital, and having been told by the medical attendant that "he thought there were little hopes of her living, and that he thought she was going to die," and she herself saying, "I know I shall never get better; what will become of my poor children?" made a statement which was taken down in writing in the presence of the magistrate. At the trial it was proposed on behalf of the prosecution to give this statement in evidence under 30 & 31 Vict. c. 35, s. 6:—Held, that the statement could not be read in evidence without proof of notice having been given to the accused before it was taken; and that the statute could have no

operation in the case of a deposition taken while the accused person was keeping out of the way, as the notice was required to be given to the accused before the taking of the statement, and not simply before the reading of it. *Reg. v. Quigley*, 18 L. T. 211.

Prisoner may Shew he had not full Opportunity of Cross-Examining.]—When it is proved that the prisoner was present when the depositions of the deceased were taken, although the law will presume that, as he was present, he had a full opportunity of examining the deceased within 11 & 12 Vict. c. 42, s. 17, evidence may nevertheless be offered to prove that he had not a full opportunity within s. 17, so as to render the depositions inadmissible. *Reg. v. Peacock*, 12 Cox, C. C. 12; *S. P., Reg. v. Watts*, *supra*.

Before a deposition of a person who is dead, or so ill as not to be able to travel, can be read, it must be proved affirmatively on the part of the prosecution that the deposition was taken in the presence of the accused person, and that he or his counsel or attorney had a full opportunity of cross-examining the witness. *Reg. v. Day*, 6 Cox, C. C. 55.

To give the accused a full opportunity within the meaning of the statute, the examination must be taken, question by question, in his presence, and in the presence of the magistrate, and it is not sufficient to read over the statement of the witness, previously taken and committed to writing, in the absence of the magistrate. *Ib.*

The accused must also be asked whether he has any question to put with reference to the statement of the individual witness. *Ib.*

Nothing should be returned as a deposition unless the prisoner had an opportunity of knowing what was said, and an opportunity of cross-examining the person making the deposition. *Reg. v. Arnold*, C. & P. 621.

The depositions taken before the magistrate against a prisoner cannot be read against him, where the witness has died since the examination, unless the depositions in cross-examination have been correctly taken and returned to the court. Depositions taken in cross-examination, at a subsequent time to those in chief, and not signed by the committing magistrates, are so irregular as to prevent the whole depositions from being read against the prisoner; and this, although both are proved by one of the committing magistrates to have been accurately taken. *Reg. v. France*, 2 M. & Rob. 207.

Witness absent Abroad at Time of Trial.]—The fact that a witness, whose deposition has been taken before the committing magistrate, is at the time of the trial residing abroad, does not render such deposition admissible in evidence against the prisoner at the trial, under the 11 & 12 Vict. c. 42, s. 17. *Reg. v. Austin*, Dears. C. C. 612; 7 Cox, C. C. 55; 25 L. J., M. C. 48; 2 Jur., N. S. 95.

Taken Abroad by British Consul—Absence of Witness.]—A witness whose evidence had been taken abroad by the British consul, under 17 & 18 Vict. c. 104, s. 270, was the captain of a British sailing vessel, which was stated, after examination of the official records by an officer of the Board of Trade, never to have been in this country. When some of the witnesses left the captain, he was in charge of the vessel at Bordeaux, but it was not known where she was

then bound for, or whether she had since sailed:—Held, that it was sufficiently proved that the witness was not in the United Kingdom, and his deposition was accordingly admitted. *Reg. v. Anderson*, 11 Cox, C. C. 154; *S. P., Reg. v. Conning*, 11 Cox, C. C. 134.

Witnesses whose evidence had been duly taken at New York by the British consul-general, under 17 & 18 Vict. c. 104, s. 270 (The Merchant Shipping Act, 1854), were seamen of a British sailing vessel, which was proved by affidavits to be still at sea, and none of the witnesses were likely to be in the United Kingdom for many months:—Held, that the affidavits sufficiently proved that the witnesses were out of the United Kingdom, their depositions were read, and the prisoner convicted. *Reg. v. Stewart*, 13 Cox, C. C. 296.

Semble, that depositions taken by a consul abroad under 7 & 8 Vict. c. 112, ss. 58, 59, and returned to this country, and certified under the consular seal to have been duly taken, are admissible under the Mercantile Marine Act, 1850 (13 & 14 Vict. c. 93, s. 115), without further proof, although it appears from extrinsic evidence that the witnesses gave their evidence in a foreign language, which was translated into English to the prisoner, and inserted in the depositions by the consul. *Reg. v. Russell*, 6 Cox, C. C. 60.

In Case of Illness of Witness.]—Depositions of a witness so ill as to be unable to travel are admissible in evidence before the grand jury as well as before the petty jury. *Reg. v. Clements*, 2 Den. C. C. 251; T. & M. 579; 5 Cox, C. C. 191; 20 L. J., M. C. 193; 15 Jur. 407; *S. P., Reg. v. Seafie*, *post*, col. 763.

On the trial of a felony, where the prosecutor is bedridden, and not likely to be able to attend the assizes, his deposition, taken by the committing magistrate in the presence of the prisoner, may be given in evidence. *Reg. v. Wilshaw*, Car. & M. 145.

— Unable to Travel.]—To render the deposition of an absent person admissible, it is not necessary that he should be absolutely unable to travel, it is sufficient if his attendance would place his life in jeopardy. *Reg. v. Day*, 6 Cox, C. C. 55.

When a person is charged before a magistrate with obtaining money by false pretences, and afterwards indicted for uttering a forged promissory note, the charges arising out of one and the same transaction, and being in fact identical, and having had the opportunity of cross-examination before the magistrate:—Held, that the deposition of a witness taken at such hearing, and who was afterwards unfit to travel to give evidence, was admissible and might be read at the trial for uttering the forged note. *Reg. v. Williams*, 12 Cox, C. C. 101.

A witness, who had been examined before the committing magistrate, came to the assize town where the trial of the accused was to take place, and into the building where the court was sitting, but before the trial came on returned to his home by the advice of a medical man, who deposed that in his judgment it would have been highly dangerous for the witness to remain. While the trial was going on, the witness was on his way home:—Held, that the witness was unable to travel, within 11 & 12 Vict. c. 42, s. 17, and consequently that his deposition before the com-

mitting magistrate might be read in evidence. *Reg. v. Wicker*, 18 Jur. 252.

A witness who had been examined before the magistrate, and whose deposition was returned, was, at the trial, said to be too ill to give evidence, though not too ill to be able to travel. The deposition was read, the court being of opinion that the words of the statute, "so ill as not to be able to travel," were applicable to a case where the witness is so ill as not to be able to travel for the purpose of giving evidence. *Reg. v. Wilson*, 8 Cox, C. C. 453.

If a witness has had an attack of paralysis, and is unable to hear or speak, or give evidence, and his physician does not permit him to go about, his depositions may be read, though it would not endanger his life to travel, or to be brought into court. *Reg. v. Cockburn*, Dears. & B. C. C. 203; 7 Cox, C. C. 265; 26 L. J., M. C. 136; 3 Jur., N. S. 447.

— **Taken before Coroners.**—A deposition taken before a coroner on an inquest is admissible where the witness is so ill as to be unable to attend at the trial, in the same manner as a deposition taken before a magistrate. *Reg. v. Hagell*, 8 Cox, C. C. 44.

— **Proof of, by whom—What Sufficient.**—Where a witness is ill, and is attended by a surgeon, the judge at the trial will not receive the witness's depositions in evidence unless the surgeon attends at the trial to prove that the witness is unable to travel; but where a witness is permanently disabled, and is not attended by a surgeon, other evidence that the witness is unable to travel may be sufficient; but where the witness is attended by a surgeon, and a person proves at the trial that he on the 18th March saw the witness in bed, and that he appeared ill, the commission-day being the 21st, and the trial the 23rd, this is not sufficient proof of the illness of the witness to render his deposition admissible. *Reg. v. Riley*, 3 C. & K. 116.

Upon the trial of a prisoner it was proposed to put in evidence the deposition of a witness absent through illness. The evidence that he was unable to travel was that of a medical man, who last saw the witness on the Monday previous to the trial, which took place on Wednesday:—Held, that this was not sufficient, and the deposition was rejected. *Reg. v. Bull*, 12 Cox, C. C. 31.

In the absence of medical evidence, a deposition will not be allowed to be read. *Reg. v. Welton*, 9 Cox, C. C. 296.

Delivery of a dead child is *prima facie* evidence of illness, and the deposition of the party is admissible. *Reg. v. Wilton*, 1 F. & F. 309.

A superintendent of police, having seen a policeman, a material witness, in bed two days before the trial, and stating that he appeared ill and so weak that he could not get out of bed:—Held, that this, without medical evidence as to the nature of the illness, was not sufficient to admit the policeman's depositions. *Reg. v. Williams*, 4 F. & F. 515.

A witness, who had been examined before the magistrate, came up five miles from the country and gave her evidence before the grand jury. She went back at night and returned in the morning for two days, during which she was waiting for the trial to come on. At the trial,

on the third day, it was proved that she had been attacked that morning with a bowel complaint, and that when the policeman left her residence early on that day she was unable to travel:—Held, that her deposition was not admissible. *Reg. v. Harris*, 4 Cox, C. C. 440.

— **Sufficiency of Proof is a Matter of Discretion.**—It is a question for the judge to determine whether the proof of a witness being so ill as not to be able to travel, within the 11 & 12 Vict. c. 42, s. 17, is sufficient for the purpose of admitting his deposition before the committing magistrate. *Reg. v. Stephenson*, L. & C. 165; 9 Cox, C. C. 156; 31 L. J., M. C. 147; 8 Jur., N. S. 522; 6 L. T. 334; *S. P.*, *Reg. v. Croucher*, 3 F. & F. 285.

Therefore, when a deposition was admitted upon evidence that the prosecutrix was daily expecting her confinement and otherwise poorly, and therefore too ill to travel, the court declined to interfere with the exercise of the discretion of the judge. *Id.*

Where a witness for the prosecution is so ill as not to be able to travel, the judge may, at his discretion, permit the deposition to be read, or postpone the trial. *Reg. v. Twit*, 2 F. & F. 553.

— **Pregnancy.**—Pregnancy alone may be a ground for the admission of a deposition. *Reg. v. Goodfellow*, 14 Cox, C. C. 326.

Pregnancy may create an illness within 11 & 12 Vict. c. 42, s. 17, so as to give the judge discretionary power to admit in evidence upon a criminal trial the deposition of a witness duly taken, who owing to pregnancy is proved to be unable to travel. *Reg. v. Wellings*, 3 Q. B. D. 426; 47 L. J., M. C. 100; 38 L. T. 652; 26 W. R. 592.

— **Proof of Pregnancy.**—It was proposed to read, on the trial at the assizes, the deposition of a witness called before the magistrates on a charge of murder, absent by reason of pregnancy. Evidence given by a medical man on February 5th, that he had last seen the witness on the 29th day of January, and that she then was daily expecting her confinement, but which had not yet taken place, was held sufficient to entitle the deposition to be read at the trial on the 5th of February. *Reg. v. Heeson*, 14 Cox, C. C. 40.

— **Through Old Age.**—At the trial of an indictment it was proposed to read the deposition of a witness on the ground that the witness was so ill as not to be able to travel. The evidence upon that point was as follows:—The medical attendant of the witness was called and said: "I know M. L. She is very nervous, and seventy-four years of age. I think she would faint at the idea of coming into court, but I think that she could go to London to see a doctor without difficulty or danger. I think the idea of seeing so many faces would be dangerous to her, and that she is so nervous that it might be dangerous to her to be examined at all. I think she could distinguish between the court going to her house and she herself coming to the court." The witness whose deposition it was proposed to read lived not far from the court:—Held, that the deposition was not admissible. *Reg. v. Farrell*, 2 L. R., C. C. 116; 43 L. J., M. C. 94; 29 L. T. 404; 22 W. R. 578; 12 Cox, C. C. 605.

When a medical man testifies that the attendance of a witness aged eighty-seven, who had given evidence before the coroner, will be dangerous to her life, and that he will not answer for the consequences if she is required to appear in court, but that she is suffering from no illness beyond great nervousness which may bring on a fit of apoplexy if she is publicly to give her evidence, her deposition taken before the coroner will not be admissible. *Reg. v. Thompson*, 13 Cox, C. C. 181.

— **Insanity of Witness.**—If a witness is actually insane at the time of the trial of an indictment for a misdemeanor, his deposition taken before the committing magistrate is receivable the same as if the witness was dead, although the insanity of the witness may be only temporary; but if it appears that the witness is not insane, but that the witness has been suffering from delirium and depression of spirits in consequence of a blow on the head, and that his intellect is affected by the injuries he has received, and it is the opinion of his physicians that he will recover, then the deposition is not receivable. *Reg. v. Marshall*, Car. & M. 147.

— **Witness kept away by Procurement of Prisoner.**—If the deposition of a witness on a charge of an indictable offence has been regularly taken before a magistrate, and at the time of the trial such witness is dead or so ill as not to be able to travel, the deposition may be read as evidence against the prisoner. So also, if it is proved that the witness is kept away by the prisoner's procurement. *Reg. v. Seafie*, 17 Q. B. 238; 5 Cox, C. C. 243; 2 Den. C. C. 281; 20 L. J., M. C. 229; 15 Jur. 607.

But such deposition is not admissible on the ground merely that the prosecutor, after using every possible endeavour, cannot find the witness. *Ib.*

If procurement of the absence is shewn, and there are several prisoners, the deposition is evidence against those only who are proved to have procured the absence. *Ib.*

d. Copies.

Furnished on Payment.—By 11 & 12 Vict. c. 42, s. 27, at any time after all the examinations shall have been completed, and before the first day of the assizes or sessions, or other first sitting of the court at which any person admitted to bail is to be tried, such person may require, and shall be entitled to have of and from the officer or person having the custody of the same, copies of the depositions on which he shall have been committed or bailed, on payment of a reasonable sum for the same, not exceeding at the rate of three halfpence for each folio of 90 words. (Substituted for provision contained in 6 & 7 Will. 4, c. 114, s. 3, repealed by s. 34 of 11 & 12 Vict. c. 42.)

Right to Copies of Depositions.—Under 6 & 7 Will. 4, c. 114, s. 3, persons committed to prison for re-examination on charges of felony, were not entitled to demand copies of the depositions. *Fletcher*, *Ex parte*, 1 New Sess. Cas. 40; 1 D. & L. 996; 13 L. J., M. C. 67; 8 Jur. 269; S. C., nom. *Reg. v. London (Lord Mayor)*, D. & M. 486; 5 Q. B. 555.

The right to copies does not attach until the prisoner is held to bail, or committed to prison for trial. *Ib.*

A prisoner had been committed on a charge of high treason, and afterwards the grand jury returned a true bill against him with others for feloniously demolishing a house under 7 & 8 Geo. 4, c. 30, s. 8. He pleaded to the indictment and wished to be tried after the other prisoners who were indicted with him for feloniously demolishing the house on the ground that he had had no copy of any depositions as to that charge. This was not allowed, as the prosecution might have been commenced without going before any magistrate, and then there would have been no depositions at all. *Reg. v. Simpson*, Car. & M. 669.

A party applying to the Queen's Bench for a rule, calling upon the justices to furnish copies of the depositions taken against him, must shew a right existing at the time of his application to the court, as well as at the time of the refusal by the justices to grant the copies. *Reg. v. Herefordshire (Justices)*, 1 L., M. & P. 323; S. C., nom. *Humphreys*, *Ex parte*, 4 New Sess. Cas. 179; 17 L. J., M. C. 189; 15 Jur. 608.

The 11 & 12 Vict. c. 42, s. 27, applies only to the case of a person committed to prison or admitted to bail for the purpose of being tried. *Ib.*

— **Depositions taken before Coroner.**—Depositions taken before a coroner were within 6 & 7 Will. 4, c. 114, s. 3, which required copies of depositions to be furnished on application to prisoners at the rate of charge therein provided; and a coroner who demands more is guilty of extortion in his office. *Reg. v. White*, 5 Cox, C. C. 562.

A coroner's jury, on the investigation of a case of homicide, returned a verdict of wilful murder against some person or persons unknown. The coroner returned the deposition he had taken to the Central Criminal Court:—Held, on application by the counsel for the prisoner indicted for the murder of the same person, for a copy of such depositions, that, although the coroner could not in such a case have been compelled to return them, under 7 Geo. 4, c. 64, s. 4, yet that having done so, the judges had power, by their general authority as a court of justice, to order a copy to be given if they thought it material to the interests of justice. *Reg. v. Greenacre*, 8 C. & P. 32.

— **Copy of Prisoner's Statement.**—A prisoner was not entitled, under 6 & 7 Will. 4, c. 114, s. 3, to a copy of his own statement returned by the magistrate, as made before him, but only to a copy of the depositions of the witnesses against him. *Reg. v. Aylett*, 8 C. & P. 669.

e. Examination on—Putting in, &c.

Counsel allowed to see Depositions in another Case.—A. was committed for having received stolen iron. B. was admitted as a witness for the crown against A. The counsel of A. applied to the judge for a sight of the depositions which had been returned against B., which was granted. *Reg. v. Walford*, 8 C. & P. 767.

Practice relating to.—The reading, on the part of the prosecution, of the prisoner's statement, returned by the magistrate at the end of the depositions, does not give the prisoner the

right to consider the depositions as in evidence on the part of the prosecution, though it appears that they were all taken before the statement was made; but if the prisoner wishes to have the whole or any particular part of the depositions read, he must read it as his evidence. *Reg. v. Pearson*, 7 C. & P. 671.

The practice of putting the depositions into the hands of a witness on cross-examination, telling him to read over the evidence which he has given before the magistrates, and then asking him whether he adheres to his present statement, without putting the depositions in evidence, or giving the jury an opportunity of knowing their contents, is inexpedient, and contrary to principle. *Reg. v. Ford*, 2 Den. C. C. 245; 3 C. & K. 113; T. & M. 573; 20 L. J., M. C. 171; 15 Jur. 406.

The proper course is, to read the deposition to him at the time, and to cross-examine upon it, or to put it in afterwards as evidence for the prisoner. *Id.*

A witness may be asked by prisoner's counsel as to what he said before the coroner, without putting in the depositions. *Reg. v. Maloney*, 9 Cox, C. C. 26.

A prosecution cannot use or refer to the depositions without putting them in. *Reg. v. Muller*, 10 Cox, C. C. 43.

If upon a trial a witness makes a statement which does not appear in his deposition, he may be asked, on cross-examination, without his deposition being put in, whether he ever made such a statement before. *Reg. v. Moir*, 4 Cox, C. C. 279.

In a case of felony, in order to prove that a witness did not state a particular fact before the magistrate, his deposition must be put in, and a witness cannot be questioned as to what he either did or did not state before the magistrate, without first allowing him to read, or to have read to him, his deposition taken before the magistrate. *Reg. v. Taylor*, 8 C. & P. 726.

In cross-examining a witness who has been examined before the magistrate, although it is admissible to ask him, referring to the depositions, whether he has not said so-and-so, his answer must be taken, unless the depositions are put in to contradict him, and it is not admissible to state that the depositions do contradict the witness without thus putting them in. *Reg. v. Riley*, 4 F. & F. 964.

On the trial of a prisoner his counsel may ask a witness for the prosecution whether he did not make a certain statement whilst under cross-examination before the magistrates, although the depositions contain no note of such cross-examination. *Reg. v. Curtis*, 2 C. & K. 763.

A witness cannot be cross-examined as to his statements made before the committing magistrate, until his depositions have been read over to him; such questions may, however, be put by the court personally, and by the prisoner's counsel, as the mouthpiece of the court, by its permission. *Reg. v. Peel*, 2 F. & F. 21.

There is no distinction between depositions before a coroner and before a magistrate with reference to the modes of cross-examination upon them. A witness cannot therefore be asked on cross-examination as to what he said before the coroner. But the deposition may be put into the witness's hands to read over to himself and refresh his memory. *Reg. v. Barnet*, 4 Cox, C. C. 269.

A witness cannot be asked on cross-examination whether, when he was examined before the magistrate, he recollected such and such a particular fact. *Reg. v. Newton*, 4 Cox, C. C. 262.

Where witnesses were sworn and examined before a magistrate, in the presence of the prisoner, and minutes of the evidence were written down by the clerk to the magistrates, and afterwards the depositions were written out from the minutes and the statements of the witnesses, by a clerk in the magistrates' clerk's office, after which the depositions so written out were read over, and signed in the presence of the magistrate and the prisoner:—Held, that an answer given by a witness to the clerk in the magistrates' clerk's office, in the course of writing out the depositions, was properly receivable in evidence, without the production of the depositions. *Reg. v. Christopher*, 4 New Sess. Cas. 139; 2 C. & K. 994; 1 Den. C. C. 536; T. & M. 225; 4 Cox, C. C. 76; 19 L. J., M. C. 103; 14 Jur. 203.

Depositions Lost—Cross-Examination on Copy.]

—If it is shewn, that depositions were regularly returned by the magistrates to the proper officer, and it is proved by the latter that they cannot be found after diligent search, the prisoner's counsel may cross-examine from copies of them, those copies being proved to be correct by the magistrates' clerk. *Reg. v. Shelburn*, 9 C. & P. 277.

Refreshing Memory of Witness.]—Where a witness for the prosecution gives a different answer on examination in chief to that which was expected, his deposition may be put in his hands for the purpose of refreshing his memory, and the question then put to him. If the witness persists in giving the same answer after his memory has been so refreshed, the question may be repeated to him from the deposition in a leading form. *Reg. v. Williams*, 6 Cox, C. C. 343.

The deposition made by a witness was allowed to be put into his hands to refresh his memory, and he was then asked what he said about a fact which he had answered before in the negative, and answered the question affirmatively. *Reg. v. Quin*, 3 F. & F. 818.

Where an accomplice who could not read had made a statement before the committing magistrate, and at the trial gave evidence falling very short of what he said before the magistrate, the judge allowed his deposition to be shewn to him, but would not allow the deposition to be read to him by the officer of the court, that the counsel for the prosecution might examine upon it. *Reg. v. Beardmore*, 8 C. & P. 260.

Where, on cross-examination, a witness is asked, with permission of the judge, to look at his deposition before the committing magistrate, and say whether he still adheres to his present statement, and it appears the witness is unable to read, the depositions cannot be read to the witness for the same purpose without being put in as evidence. *Reg. v. Matthews*, 4 Cox, C. C. 93.

Evidence not in Depositions.]—Material evidence may be given against a prisoner on his trial in addition to what appears from the depositions to have been given against him before the magistrates. *Reg. v. Ward*, 2 C. & K. 759.

Calling Witnesses not in Depositions.]—A witness whose evidence is relevant may be called by the prosecution, although he has not been before the magistrates, and although his name and the substance of his evidence have not been given to the prisoner or to his attorney. *Reg. v. Greenslade*, 11 Cox, C. C. 412.

How Proved.]—In a case affecting the life of a party, it is very desirable that a magistrate who took the depositions against the prisoner with his own hand should be called as a witness, before the depositions are read, to prove the correctness of what he took down; but it is not absolutely necessary, in point of law, that he should be called, and the depositions may be read on proof of his handwriting. *Reg. v. Pikesley*, 9 C. & P. 124.

If upon the trial of a prisoner a witness gives evidence of facts of which no mention is made in his deposition as taken before the committing magistrate, the clerk to the magistrate may be called for the purpose of stating that such facts were stated by the witness when he made his deposition, but were not taken down by him, the clerk. *Reg. v. Moore*, 20 L. T. 987.

Depositions may be proved by a person who was present, without calling the magistrate or his clerk. *Reg. v. Wilshaw*, Car. & M. 145.

3. PRESUMPTIONS OR PROBABILITIES OF GUILT.

In a criminal case the jury, in order to convict, ought to be satisfied by the evidence, affirmatively, as a conviction created in their minds beyond all reasonable doubt, that the guilt of the prisoner is established; and if there is only an impression of probability, they ought to acquit him. *Reg. v. White*, 4 F. & F. 383.

So far as the case rests on direct testimony, the jury should, if there are any circumstances to impeach the credibility of the witnesses, look carefully to those circumstances as elements of doubt in the case. *Id.*

A mere scintilla of evidence not sufficient to justify a verdict ought not to be left to the jury. *Reg. v. Smith*, L. & C. 607.

4. ACCOMPLICES.

Corroboration—Rule of Practice not of Law.]

—It is not a rule of law, but of practice only, that a jury should not convict on the unsupported testimony of an accomplice. *Reg. v. Stubbs*, Dears. C. C. 555; 25 L. J., M. C. 16; 1 Jur., N. S. 1115.

Therefore, if a jury chose to act on such evidence only, the conviction cannot be quashed as bad in law. *Id.*

The better practice is for the judge to advise the jury to act, unless the testimony of the accomplice be corroborated, not only as to the circumstances of the offence, but also as to the participation of the accused in the transaction, and when several parties are charged, it is not sufficient that the accomplice should be confirmed as to one or more of the prisoners to justify a conviction of those prisoners with respect to whom there is no confirmation. *Id.*

The rule that the evidence of an accomplice requires corroboration is not a rule of law, but a rule of general and usual practice; the applica-

tion of which is for the discretion of the judge by whom the case is tried; and in the application of the rule much depends on the nature of the offence, and the extent of the complicity of the witness in it. *Reg. v. Boyes*, 1 B. & S. 311; 30 L. J., Q. B. 301.

Before admitting a person as an approver, it is the duty of the magistrate to inquire into the case and see how far such approver is mixed up with the transaction, or to what extent he would be criminally liable for his acts. Though an accomplice, who has been admitted as an approver, may give evidence, no matter how great his own criminality, it is a wise observation that, without corroboration, a jury should be slow to convict on such evidence. *Reg. v. Dunn*, 5 Cox, C. C. 507.

A prisoner ought not to be convicted upon the evidence of any number of accomplices, unconfirmed by other testimony. *Rea v. Noakes*, 5 C. & P. 326.

A person indicted for a misdemeanor may be legally convicted upon the uncorroborated evidence of an accomplice. *Rea v. Jones*, 2 Camp. 102; *S. P.*, *Rea v. Hastings*, 7 C. & P. 152.

Although all persons present at and sanctioning a prize-fight, where one of the combatants is killed, are guilty of manslaughter, as principals in the second degree; yet they are not such accomplices as to require their evidence to be confirmed, if they are called as witnesses against other parties charged with the manslaughter. *Rea v. Hargrave*, 5 C. & P. 170.

A married woman who consents to her husband's committing an unnatural offence with her, is an accomplice in the felony, and, as such, her evidence requires confirmation, although consent or not consent is quite immaterial to the offence. *Reg. v. Jellyman*, 8 C. & P. 604.

Evidence Corroborated as to some Prisoners.]

—On an indictment against principal and accessories, the case against the principal was proved by the testimony of an accomplice, who was confirmed as to the accessories, but not as to the principal. The jury was directed to acquit the prisoners. *Rea v. Wells*, M. & M. 326.

If the testimony of an accomplice is confirmed so far as it relates to one prisoner, but not as to another, the one may be convicted on the testimony of the accomplice, if the jury deems him worthy of credit. *Rea v. Dawber*, 3 Stark. 34, 35, n.

What Corroboration Sufficient.]

—An accomplice does not require a confirmation as to the person he charges, if he is confirmed as to the particulars of his story. *Rea v. Birckett*, R. & R. C. C. 251.

And the corroboration of the evidence of an accomplice need not be on every material point, but must be so confirmed as to convince the jury that his statement was correct and true. *Rea v. Barnard*, 1 C. & P. 88.

There is a great difference between confirmations of an accomplice as to the circumstances of the felony, and those which apply to the individual charged. The former only shew that the accomplice was present at the commission of the offence, but the others shew that the prisoner was connected with it. Confirmation of an accomplice as to the commission of the felony, is really no confirmation at all, and though a jury may legally convict on the evidence of an

accomplice only, the judges advise them not to act on the evidence of an accomplice, unless he is confirmed as to the particular person who is charged with the offence. *Rea v. Wilkes*, 7 C. & P. 272.

The evidence of an approver may be acted on by the jury if they think it true, but the practice is to require some corroboration of his evidence. It is not necessary that he should be corroborated in every particular, for if so it would not be necessary to call him as a witness, but there must be a certain amount of confirmation sufficient to satisfy the jury. *Reg. v. Gallagher*, 15 Cox, C. C. 291.

On an indictment for causing a person to take excessive quantities of a noxious thing, there being no other evidence but that of the woman that the prisoner incited her to take the excessive doses except that her father accused him of giving his daughter such things "to produce abortion," and that he did not deny it:—Held, that this was some corroborative evidence, even assuming the woman to be in the position of an accomplice requiring corroboration. *Reg. v. Cramp*, 14 Cox, C. C. 390.

In a case of felony the testimony of the wife of an accomplice is not such evidence as a jury ought to rely upon as confirmation of the statement of the accomplice. *Rea v. Neal*, 7 C. & P. 168.

On a charge of stealing two sheep, an accomplice stated that the prisoner himself stole them; and, to confirm him, evidence was given that a quantity of mutton was found in the house in which the prisoner resided, which corresponded with parts of the stolen sheep:—Held, a sufficient confirmation of the accomplice to be left to the jury; but that if the confirmation had merely gone to the extent of confirming the accomplice as to a matter connected with himself only, it would not have been sufficient. *Reg. v. Birkett*, 8 C. & P. 732.

The confirmation of an accomplice ought to be as to some matter which goes to connect the prisoner with the transaction, and it would be highly dangerous to act on the evidence of an accomplice unconfirmed with respect to the party accused. *Reg. v. Dyke*, 8 C. & P. 261.

The confirmation of an accomplice should be as to some circumstance affecting the party accused, as by shewing the party and accomplice together under such circumstances as were not likely to have occurred, unless there was concert between them. *Reg. v. Furlar*, 8 C. & P. 106.

In a case of night-poaching, the only confirmation was, that, on the evening of the offence, the accomplice and the prisoner were drinking together at a public-house, commonly frequented by the prisoner, and that they both left the house together, when it was shut up for the night. This was considered no sufficient confirmation. *Ib.*

Evidence of Prisoner pleading Guilty when Received.]—One prisoner who has pleaded guilty will not be allowed to be called as a witness against another, until the judge has heard the evidence necessary to corroborate that of an accomplice. *Reg. v. Sparks*, 1 F. & F. 388.

Acts of Accomplice Evidence against Prisoner.]—An indictment charged K. and W. with falsely

pretending to B. that they had a quantity of tobacco, which they proposed to sell, and did sell to him, and thereby obtained money from him. The evidence was, that K. and another person, P., acting together, were the chief parties by whom the false pretences had been made:—Held, that the acts of P. were the acts of K., and admissible against him upon the indictment. *Reg. v. Kerrigan*, L. & C. 383; 9 Cox, C. C. 441; 33 L. J., M. C. 71; 9 L. T. 843; 12 W. R. 416.

Before Grand Jury.]—An accomplice may give evidence before a grand jury to support an indictment against a particeps criminis. *Rea v. Dodd*, 1 Leach, C. C. 155.

Information of Dead Accomplice.]—The information of a dead accomplice may be read in evidence against a prisoner. *Rea v. Westbeer*, 1 Leach, C. C. 12.

Exemption from Prosecution.]—An accomplice, who is a witness for the crown, is not entitled as a matter of right to be exempt from being prosecuted for other offences at the same assizes, at which he has been such witness. *Rea v. Lee*, R. & R. C. C. 361; S. P., *Rea v. Bruntom*, R. & R. C. C. 454.

An accomplice, who in a case out of the statutes, is, under the practice allowed, admitted by the justices of peace as a witness, and is afterwards prosecuted, has only a claim to the mercy of the crown, founded on an express or implied promise of the magistrate on a condition performed: and it depends on his conduct fully and fairly disclosing the joint guilt of himself and his companions, whether the court will admit him to bail, that he may apply for a pardon. *Rea v. Rudd*, Cowp. 331; 1 Leach, C. C. 115.

5. GOVERNMENT SPIES.

Cross-Examination.]—Upon an indictment for murder, a sergeant in the police, after stating in cross-examination that he attended a debating society where political subjects were discussed, by the direction of the commissioners of police, for the purpose of noticing and reporting, and that he went in private clothes, was asked if he was a spy:—Held, that the question could not be put, as it required the witness to draw an inference from facts; but that he might be asked under what directions, and for what purpose he went, and what he did when there. *Reg. v. Bernard*, 1 F. & F. 240.

Corroboration not Required.]—A person employed by government to mix with conspirators, and pretending to aid their designs for the purpose of betraying them, does not require corroboration as an accomplice. *Reg. v. Mullins*, 3 Cox, C. C. 526.

6. COMPETENCY OF WITNESSES.

No Incapacity on Ground of Crime or Interest.]—By 6 & 7 Vict. c. 85, s. 1, *no person offered as a witness shall be excluded by reason of incapacity from crime or interest from giving evidence in any criminal proceeding in any court, but every person so offered may and shall be admitted to give evidence on oath or solemn affirmation, where affirmation is by law receiv-*

able, notwithstanding such person may or shall be interested, and notwithstanding such person offered as a witness may have been previously convicted of crime.

For or against Self-Incrimination.—By 14 & 15 Vict. c. 99, s. 3, nothing therein contained shall render any person, who in any criminal proceeding is charged with the commission of any indictable offence, or any offence punishable on summary conviction, competent or compellable to give evidence for or against himself or herself, or shall render any person compellable to answer any question tending to eriminate himself or herself.

Non-Repair of Highway or Bridge.—By 40 & 41 Vict. c. 14 (An Act for the Amendment of the Law of Evidence in certain Cases of Misdemeanor), s. 1, on the trial of any indictment or other proceeding for the non-repair of any public highway or bridge, or for a nuisance to any public highway, river or bridge, and of any other indictment or proceeding instituted for the purpose of trying or enforcing a civil right only, every defendant to such indictment or proceeding, and the wife or husband of any such defendant, shall be admissible witnesses and compellable to give evidence.

Criminal Proceeding—What is.—An information against a party, under 1 & 2 Will. 4, c. 32, s. 23, for unlawfully using snares for taking game, he not being authorized so to do for want of a game certificate, is a criminal proceeding for an offence punishable on summary conviction within s. 3 of the 14 & 15 Vict. c. 99, and therefore the party charged is not rendered a competent witness by that statute. *Cattell v. Ireson*, 4 Jur., N. S. 560.

When articles of the peace are exhibited against any person, the person against whom they are exhibited may not give evidence before the justices in contradiction of the facts stated in the articles. *Lost v. Hutton*, 45 L. J., M. C. 95; 34 L. T. 730.

Upon a proceeding under 9 Geo. 4, c. 61, s. 21, against an alehouse-keeper, for unlawfully and knowingly permitting divers persons of notoriously bad character to assemble and meet together in his house and premises against the tenure of his licence, such alehouse-keeper is not a competent witness, and cannot give evidence in his own behalf. *Parker v. Green*, 2 B. & S. 299; 9 Cox, C. C. 169; 31 L. J., M. C. 133; 6 L. T. 46.

Self-Incrimination.—The persons who are supposed to have been the seconds at a duel may refuse to give evidence on the trial of the principals. *Rez v. England*, 2 Leach, C. C. 767.

But their testimony may be received as the testimony of persons admitted witnesses for the crown. *Ib.*

And if once sworn, they must disclose the whole truth, although they may involve themselves in the guilt of the transaction. *Ib.*

Competency, how Tried.—The competency of a witness may be tried by examining him on the voir dire or by evidence aliunde. *Wakefield's case*, 2 Lewin, C. C. 279.

Witness Insane—Duty of Judge.—A lunatic

patient, who had been in confinement in a lunatic asylum, and who laboured under the delusion, both at the time of the transaction and of the trial, that he was possessed by 20,000 spirits, but whom the medical witness believed to be capable of giving an account of any transaction that happened before his eyes, and who appeared to understand the obligation of an oath, and to believe in future rewards and punishments, was called as a witness on a trial for manslaughter:—Held, that his testimony was properly received in evidence; and that where a person under an insane delusion is called as a witness, it is for the judge, at the time, to say whether he is competent to be a witness, and it is for the jury to judge of the credit that is to be given to his testimony. *Reg. v. Hill*, 2 Den. C. C. 254; T. & M. 582; 5 Cox, C. C. 259; 15 Jur. 470.

If upon his examination upon the voir dire, he exhibits a knowledge of the religious nature of an oath, it is a ground of his admission. *Ib.*

It is the duty of the judge presiding at a trial to decide as to the competency of a witness; and if he has admitted a witness to give evidence, but upon proof of subsequent facts affecting the capacity of the witness and of observations of his subsequent demeanor, the judge changes his opinion as to his competency, the judge may stop the examination of the witness, strike his evidence out of the notes, and direct the jury to consider the case exclusively with reference to the evidence of the other witnesses. *Reg. v. Whitehead*, 1 L. R., C. C. 33; 35 L. J., M. C. 186; 14 L. T. 489; 14 W. R. 677.

Guilty Party not Indicted.—If two are guilty of a murder, and one is indicted and the other not, the party not indicted is a good witness for the crown. *Rez v. Timckler*, 1 East, P. C. 354.

Persons jointly Indicted before Conviction.—Three were jointly indicted for felony. They pleaded guilty and were tried together. Two of them were allowed before conviction to be called as witnesses on the behalf of the third. *Reg. v. Deeley*, 11 Cox, C. C. 607; 23 L. T. 168.

A., B. and C. and D. were indicted together. After plea, and before they were given in charge to the jury, the court allowed D. to be removed from the dock, and examined as a witness against his associates. *Reg. v. Gerber*, T. & M. 647.

Where two prisoners are jointly indicted for a felony and plead not guilty, but only one is given in charge to the jury, the other is an admissible witness, although his plea of not guilty remains on the record undisposed of. *Winsor v. Reg. (in error)*, 1 L. R., Q. B. 390; 35 L. J., M. C. 161; 12 Jur., N. S. 561; 14 L. T. 567; 14 W. R. 695; 7 B. & S. 490—Ex. Ch.

On an indictment of three persons jointly for publishing blasphemous libels, one was tried separately:—Held, that the defendant, thus tried first and separately, was entitled to call the other defendants as witnesses on his behalf, though they could not be called as witnesses for the prosecution without taking a verdict of acquittal against them, the trial being separate. The observations of Cockburn, C. J., in *Reg. v. Winsor*, held not applicable, as there the fellow-prisoner was called for the crown. *Reg. v. Bradlaugh* (No. 2), 15 Cox, C. C. 217.

Of Persons Tried together.—When two are

indicted and tried together, one is not a competent witness for the other. *Reg. v. Payne*, 1 L. R., C. C. 349; 41 L. J., M. C. 65; 26 L. T. 41; 20 W. R. 390; 12 Cox, C. C. 118.

Jointly Indicted—Pleading Guilty.—A. and B. being indicted for stealing, and C. for receiving, B. pleaded guilty, and was tendered as a witness against A. and C. He was objected to by the counsel for the prisoners, as inadmissible:—Held, an admissible witness at common law. *Reg. v. Hinks*, 1 Den. C. C. 84; 2 C. & K. 462.

A. and B. were jointly charged in the same indictment with breaking into a house and stealing goods. A. pleaded guilty, and B. pleaded not guilty, and was tried. A's plea of guilty was recorded, but no sentence had been passed on him. B. wished to call A. as a witness for him:—Held, that he might do so. *Reg. v. George*, Car. & M. 111.

A prisoner who pleads guilty to an indictment, and who has been previously convicted of felony, is a competent witness against other prisoners charged in the same indictment. *Reg. v. Drury*, 3 C. & K. 190; *S. P.*, *Reg. v. Arundel*, 4 Cox, C. C. 260.

Prisoner Sentenced to Death.—A convict under sentence of death is incapable of being called as a witness. *Reg. v. Webb*, 11 Cox, C. C. 133.

Husband and Wife.—By 14 & 15 Vict. c. 99, s. 3, *nothing therein contained shall in any criminal proceeding render any husband competent or compellable to give evidence for or against his wife, or any wife competent or compellable to give evidence for or against her husband.*

By 16 & 17 Vict. c. 83, s. 2, *nothing therein contained shall render any husband competent or compellable to give evidence for or against his wife, or any wife competent or compellable to give evidence for or against her husband, in any criminal proceeding.*

By s. 3, *no husband shall be compellable to disclose any communication made to him by his wife during the marriage, and no wife shall be compellable to disclose any communication made to her by her husband during the marriage.*

— **When Competent Witnesses.**—In all cases of personal injuries committed by the husband or wife against each other, the injured party is an admissible witness against the other. *Reg. v. Jagger*, 1 East, P. C. 455; *S. P.*, *Reg. v. Pearce*, 9 C. & P. 667.

On a charge of abduction, the wife is a witness as well for as against her husband, although she has cohabited with him from the day of the marriage. *Reg. v. Perry*, 1 Russ. C. & M. 949; 1 East, P. C. 454.

Where several defendants were indicted for conspiring to carry away a girl under the age of sixteen from her father's custody and to cause her to marry one of the defendants:—Held, that assuming the girl to be at the time the lawful wife of one of the defendants, she was a competent witness for the prosecution. *Reg. v. Wakefield*, 2 Lewin, C. C. 279.

Quære, whether a woman who has gone through the ceremony of marriage with a man can be allowed to prove the invalidity of the marriage, and that she is not his wife. *Peat's case*, 2 Lewin, C. C. 288.

A. being tried for sheep stealing, it was proposed to call the wife of B. to prove that A. and B. had jointly stolen the sheep, B. having been convicted of it at the previous quarter sessions:—Held, that she was a competent witness. *Reg. v. Williams*, 8 C. & P. 284.

A wife is not a competent witness against her husband, charged under the Vagrant Act (5 Geo. 4, c. 83, s. 3), with neglecting to maintain her, whereby she became chargeable to the parish. *Reeve v. Wood*, 5 B. & S. 364; 34 L. J., M. C. 15; 11 Jur., N. S. 201.

A reputed first wife, on a charge of bigamy, cannot give evidence in favour of her supposed first husband. *Peat's case*, 2 Lewin, C. C. 111.

Husband or Wife of one Prisoner.—The wife of one of several persons on their trial at the same time on a joint indictment cannot be called as a witness for or against any of them, notwithstanding that the indictment contains more counts than one respectively charging distinct offences. *Reg. v. Thompson*, 1 L. R., C. C. 377; 41 L. J., M. C. 112; 26 L. T. 667; 20 W. R. 728; 12 Cox, C. C. 202.

On an indictment for larceny the wife of a receiver who is not indicted cannot be compelled to give her evidence against the prisoner. *Reg. v. Ast*, Car. C. L. 66.

On an indictment against the wife of W. S. and others, for a conspiracy in procuring W. S. to marry, W. S. is not a competent witness for the prosecution. *Reg. v. Serjeant*, R. & M. 352.

The wife of one of several prisoners is inadmissible as a witness. *Reg. v. Hood*, 1 M. C. C. 281; *S. P.*, *Reg. v. Smith*, Ib. 289.

Even to prove an alibi by the other. *Reg. v. Denlow*, 2 Cox, C. C. 230.

The wife of one defendant cannot be called on behalf of a co-defendant, though the parties appear and defend separately. *Reg. v. Locker*, 5 Esp. 107.

A. and B. were indicted for burglary and stealing. A part of the stolen property was found in the house of each of them:—Held, that the wife of A. was a competent witness to prove that she took to B.'s house the stolen property that was found there. *Reg. v. Sills*, 1 C. & K. 494.

The prisoner was indicted for obtaining money from the trustees of a savings bank, by falsely pretending that a document produced by the wife of D. had been filled up by D.'s authority; and in another count for conspiring with the wife of D. to cheat the bank. D.'s wife presented the document, which had been fraudulently filled up at the instance of the prisoner, and obtained the money, and afterwards eloped with the prisoner. D.'s evidence was necessary to shew that he had given no authority, but it was objected to on the ground that it implicated his wife:—Held, that D.'s evidence was admissible, as the wife was not charged upon the indictment. *Reg. v. Halliday*, Bell, C. C. 257; 8 Cox, C. C. 298; 29 L. J., M. C. 148; 6 Jur., N. S. 514; 2 L. T. 254; 8 W. R. 423.

Marriage Invalid.—One of two prisoners had married his deceased wife's sister:—Held, that she was a competent witness against him upon his trial. *Reg. v. Young*, 5 Cox, C. C. 296.

A witness for the prosecution was examined on the part of the prisoners on the voir dire, and deposed that she was married to one of them:—Held, that she might be further examined on

the voir dire, on the part of the prosecution, to prove that the same prisoner had been previously married to her sister. The witness stated, on such further examination, that she and her sister, who was seven years older than herself, had always lived together with their parents, and that she always believed her to be her sister: Held, sufficient proof of the relationship. *Id.*

7. COMPELLING ATTENDANCE.

Payment of Expenses Refused.—Where a witness was subpoenaed by a defendant indicted for a conspiracy, and before he was examined requested to have his expenses paid, and stated that no money was paid to him at the time he was served, he was obliged to give evidence, although the defendant refused to pay such expenses, and although the indictment was removed by certiorari, and came down for trial at the assizes as a civil record. *Ree v. Cooke*, 1 C. & P. 322.

Attachment for not Obeying Subpœna.—A subpoena may be issued from the crown-office, requiring a witness to attend at the assizes in the country, to give evidence in support of an intended prosecution for a felony; and the court will grant an attachment against him for not attending in obedience to the subpoena. *Ree v. Ring*, 8 T. R. 585.

Person Present may be Called though not Subpœnaed.—In a criminal case, a person, who is present in court, when called as a witness, is bound to be sworn and to give his evidence, although he has not been subpoenaed. *Ree v. Sadler*, 4 C. & P. 218; *S. P.*, *Blackburn v. Hargreave*, 2 Lewin, C. C. 259.

8. SWEARING.

Affirmation Allowed on Conscientious Grounds.

—By 24 & 25 Vict. c. 66, reciting that it is expedient to grant relief to persons who may refuse or be unwilling, from alleged conscientious motives, to be sworn in criminal proceedings, it is enacted, if any person called as a witness in any court of criminal jurisdiction in England or Ireland, or required or desiring to make an affidavit or deposition in the course of any criminal proceeding, shall refuse or be unwilling, from alleged conscientious motives, to be sworn, it shall be lawful for the court or judge, or other presiding officer or person qualified, to take affidavits or depositions, upon being satisfied of the sincerity of such objections, to permit such person, instead of being sworn, to make his or her solemn affirmation or declaration in the words following, that is to say: "I, A. B., do solemnly, sincerely, and truly affirm and declare, that the taking of any oath is according to my religious belief unlawful, and I do also solemnly, sincerely, and truly affirm and declare," &c., which solemn affirmation and declaration shall be of the same force and effect as if such person had taken an oath in the usual form.

And by s. 2, if the declaration or affirmation is false, the party making same is liable to the penalties and punishment of perjury.

Affirmation Allowed on other Grounds.—By 32 & 33 Vict. c. 68, s. 4, if any person called to give

evidence in any court of justice, whether in a civil or criminal proceeding, shall object to take an oath, or shall be objected to as incompetent to take an oath, such person shall, if the presiding judge is satisfied that the taking of an oath would have no binding effect on his conscience, make the following promise and declaration:

"I solemnly promise and declare that the evidence given by me to the court shall be the truth, the whole truth, and nothing but the truth":

And any person who, having made such promise and declaration, shall wilfully and corruptly give false evidence, shall be liable to be indicted, tried and convicted for perjury as if he had taken an oath.

Witness must be Sworn when Affirmation not Allowed.—No one can give evidence in a court of justice without being sworn, unless he belongs to one of the classes for whom special provision has been made by the legislature. *Maden v. Catanaeh*, 7 H. & N. 360; 31 L. J., Ex. 118; 7 Jur., N. S. 1107; 5 L. T. 288; 10 W. R. 112.

Witness—How Sworn.—A Scotch covenantor may give evidence in a criminal prosecution, on being sworn according to the custom of his sect, without kissing the book. *Mildrom's case*, 1 Leach, C. C. 412.

So a Mahometan may be sworn on the Koran in a prosecution for a capital offence. *Ree v. Morgan*, 1 Leach, C. C. 54.

Mode of swearing Chinese witnesses. *Reg. v. Entrehman*, Car. & M. 248.

A Chinese, who is sworn according to a form which is obligatory upon his conscience, is a good witness in a court of law. *Id.*

Who may be Sworn.—A negro, who was called as a witness, stated, before he was sworn, that he was a Christian, and had been baptized:—Held, that he ought to be sworn, and that no further question could be asked him before he was so. *Reg. v. Serra*, 2 C. & K. 53.

An infant cannot, under any circumstances, be admitted to give evidence, except upon oath. *Ree v. Powell*, 1 Leach, C. C. 110.

In cases of carnal knowledge of children, the infant witness, though under seven years of age, if apprised of the nature of an oath, must be sworn. *Ree v. Brasier*, 1 Leach, C. C. 199; 1 East, P. C. 443.

A witness, though deaf and dumb, may be sworn and give evidence on an indictment for felony, if intelligence can be conveyed to, and received by him, by means of signs and tokens. *Ruston's case*, 1 Leach, C. C. 408; *S. P.*, *Ree v. Jones*, 1 Leach, C. C. 452, n.

A witness cannot be sworn to give evidence unless he has a religious belief. *Maden v. Catanaeh*, 7 H. & N. 360; 31 L. J., Ex. 118; 7 Jur., N. S. 1107; 5 L. T. 288; 10 W. R. 112.

Postponing Trial to Instruct Witness as to Oath.—Where a bill for rape on a child under the age of ten has been ignored by the grand jury, in consequence of the judge refusing to allow the child to be sworn as a witness, on the ground of her want of knowledge of the obligation of an oath, the prisoner was ordered to be detained in custody until the child could be properly instructed. *Reg. v. Baylis*, 4 Cox, C. C. 23.

A person who has no notion of eternity, or of

a future state of rewards and punishments, cannot be examined as a witness, but the trial may be postponed until the witness is instructed in the nature of this obligation. *Rea v. White*, 1 Leach, C. C. 430.

In a case of carnally knowing and abusing a girl under ten years of age, it appeared on an application on the part of the prosecution to postpone the trial, that the girl was only six years old, and by reason of her age quite incompetent to take an oath:—Held, that the trial ought not to be postponed in order that the child might be instructed as to the nature of an oath; but that there might be cases of children of more matured intellect, e.g., of ten or twelve years old, who might be from neglected education incapable of being sworn, in which such a postponement might be proper. *Reg. v. Nicholas*, 2 C. & K. 246; *S. P.*, *Rea v. Williams*, 7 C. & P. 320.

Witness by Mistake not Sworn.]—If on an indictment for felony, after the jury has delivered a verdict of guilty, it is discovered that one of the witnesses for the prosecution has given his evidence without having been previously sworn; the proper course to pursue is to direct the jury to reconsider the case, dismissing from their minds the evidence of that particular witness. *Reg. v. James*, 6 Cox, C. C. 5.

By whom Witnesses Sworn.]—Witnesses are sworn by the court through the instrumentality of some of its officers, and it is not material whether the oath is administered by the crier or clerk of the peace, so that it is done in open court. *Reg. v. Tew*, Dears. C. C. 429; 24 L. J., M. C. 62.

9. ORDERING TO LEAVE COURT.

Right to Order.]—It is almost a matter of right for a party to have a witness go out of court while a legal argument is going on as to his evidence. *Reg. v. Murphy*, 8 C. & P. 297.

Disobedience to Order—Effect of.]—Where a witness for a prosecution remains in court after an order for the witnesses to withdraw, the judge may still allow him to be examined, subject to observations on his conduct for disobeying the order. *Rea v. Colley*, M. & M. 329.

The witnesses had been ordered out of court, but the attorney remained in court:—Held, that he could not be examined as a witness. *Rea v. Webb*, 3 Stark. L. of Ev. 1733.

On a trial for arson, a witness for the prisoner had left the court, on an order being given for the witnesses to go out of court; but he had afterwards come into court again, and heard a part of the evidence: he was allowed to be examined. *Rea v. Brown*, 4 C. & P. 588, n.

But on the trial of an indictment for perjury, all the witnesses were ordered out of court. After this order a witness for the prosecution remained in court: the judge would not allow him to be examined. *Rea v. Wylde*, 6 C. & P. 380.

10. NAMES ON BACK OF INDICTMENT.

Duty of Prosecution to call Witnesses.]—Counsel for the prosecution is not bound to call all the witnesses on the back of an indictment. He may use his own discretion, but must have the witnesses in attendance. If the prisoner wishes

to have a witness called, when not called for the prosecution, the witness becomes his witness, and the counsel for the prosecution will have the right to reply. *Reg. v. Cassidy*, 1 F. & F. 79; *S. P.*, *Reg. v. Woodhead*, 2 C. & K. 520.

Where there are witnesses on the back of the indictment who have not been called, the prisoner may insist on their being put into the box as the witnesses for the crown, in order that they may be cross-examined in his behalf. *Reg. v. Bailey*, 2 Cox, C. C. 191.

It is, in general, a matter entirely within the discretion of counsel for the prosecution, whether all the witnesses at the back of the bill should be called on behalf of the crown or not; and although the judge has the power to interfere, he will only exercise it in extreme cases. *Reg. v. Edwards*, 3 Cox, C. C. 82.

Although the counsel in a prosecution for felony is not bound to call every witness whose name is on the back of the indictment; yet the judge may do so, to allow the prisoner's counsel an opportunity of cross-examining them. *Rea v. Simmonds*, 1 C. & P. 84.

If counsel for the prosecution calls a witness whose name is on the back of the indictment, but does not examine him, and such witness is examined by the prisoner's counsel, any question put by the prosecutor's counsel after this must be considered as a re-examination, and therefore the prosecutor's counsel cannot ask anything that does not arise out of the previous examination by the prisoner's counsel. *Rea v. Bezzlen*, 4 C. & P. 220.

Though the counsel for the prosecution may content himself with putting into the box a witness whose name is on the back of the bill, without asking him any questions on the part of the prosecution; yet it is better that he should be examined, whether his evidence is favourable to the prosecution or not, as the only object of the investigation is to discover the truth. *Reg. v. Bull*, 9 C. & P. 32.

If the counsel for the prosecution declines calling a witness whose name is on the back of the indictment, it is in the discretion of the judge who tries the case, whether the witness shall or shall not be called, for the prisoner's counsel to examine him before the prisoner is called on for his defence. *Rea v. Badle*, 6 C. & P. 186.

If the witness is so called, the judge will allow the examination of the witness to assume the shape of a cross-examination, but will not allow the prisoner's counsel to call any witnesses to contradict him. *Id.*

The calling of a witness, whose name is on the back of the indictment for the other side, to cross-examine him, is by no means of course. It is discretionary, even in felony, but it is a discretion always exercised. *Reg. v. Vincent*, 9 C. & P. 91.

Defendant not entitled to Names and Addresses.]—The court has no power to oblige a prosecutor to give to a defendant the additions and places of residence of witnesses named on the back of an indictment. *Reg. v. Gordon*, 2 D., N. S. 417; 12 L. J., M. C. 84; 6 Jur. 996.

A prisoner indicted for felony is not entitled to a list of the names and addresses of the witnesses on the back of the indictment, but he will be allowed to inspect the indictment for the purpose of seeing the names of such witnesses. *Reg. v. Lacey*, 3 Cox, C. C. 517.

Nisi Prius Record.]—Where an indictment is tried at nisi prius, the nisi prius record does not shew what names were on the back of the indictment. *Re v. Smith*, 5 C. & P. 201.

11. DECLARATIONS IN ARTICULO MORTIS.
See ante, MURDER.

12. EXAMINING AND CROSS-EXAMINING WITNESSES.

When Court calls Witness.]—The court refused, on the application of the prisoner's counsel, to call a witness who had been examined before the coroner, but had not been called by the prosecution. *Reg. v. Wiggins*, 10 Cox, C. C. 562. *See also cases ante*, col. 778.

Cross-Examination—What may be Asked.]—A witness for the crown cannot, in cross-examination, be compelled to state through what channel he made a disclosure to Government, either immediately or mediately. *Watson's case*, 2 Stark. 116.

A witness for the prosecution in felony may be asked in cross-examination whether he has not stated certain facts before the grand jury, and the witness is bound to answer that question. *Reg. v. Gibson*, Car. & M. 672.

Whether Witness previously Convicted.]—By 28 & 29 Vict. c. 18, s. 6, 'a witness may be questioned as to whether he has been convicted of any felony or misdemeanor, and, upon being so questioned, if he either denies or does not admit the fact, or refuses to answer, it shall be lawful for the cross-examining party to prove such conviction; and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for such offence, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court where the offender was convicted, or by the deputy of such clerk or officer (for which certificate a fee of 5s. and no more shall be demanded or taken), shall, upon proof of identity of the person, be sufficient evidence of the said conviction, without proof of the signature or official character of the person appearing to have signed the same.'

As to previous Contradictory Statements of Adverse Witness.]—By 28 & 29 Vict. c. 18, s. 4, if a witness, upon cross-examination as to a former statement made by him relative to the subject-matter of the indictment or proceeding, and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it; but before such proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

And by s. 5, a witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject-matter of the indictment or proceeding, without such writing being shewn to him; but if it is intended to contradict such witness by the writing, his attention must, before such con-

tradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him: provided always that it shall be competent for the judge, at any time during the trial, to require the production of the writing for his inspection, and he may thereupon make such use of it for the purposes of the trial as he may think fit.

Rebutting Case in Reply to Substantive Evidence contradicting Witness for Prosecution.]—

In a trial for murder, a witness who swore he identified the prisoner as one of the persons who committed the murder, was cross-examined on behalf of the prisoner, as to an alleged conversation which he had shortly after the commission of the crime, in which he was alleged to have stated that the prisoner was not the guilty party. The witness denied that he made such a statement, and the prisoner, as a substantial part of his defence, produced A. and B., who were present at the alleged conversation, to contradict the witness. At the close of the prisoner's case the prosecution were allowed to examine C. and D., who were present at the alleged conversation, to corroborate the statement of the witness and contradict A. and B. A witness, who gave evidence to identify the prisoner as one of the persons who committed the murder, had a conversation with E., a police constable, shortly after the commission of the crime. E., who was examined on behalf of the prisoner, deposed that the witness stated to him that he could not recognize any of the murderers, as they were masked. On cross-examination, E. said that he had made a report to his superior officers of this statement of the witness. The crown were not allowed to examine E.'s superior officers for the purpose of contradicting him as to the fact of his having made such a report to them. *Reg. v. Whelan*, 8 L. R., Ir. 314; 14 Cox, C. C. 595.

Contradicting.]—The sole witness to the commission of an offence having sworn that she did not know the prisoner at the time, evidence was admitted for the defence that she had in fact known him for years. *Reg. v. Dennis*, 3 F. & F. 502.

Discrediting Character of Adverse Witness.]

—By 28 & 29 Vict. c. 18, s. 3, in all criminal cases a party producing a witness shall not be allowed to impeach his credit by general evidence of bad character; but he may, in case the witness shall, in the opinion of the judge, prove adverse, contradict him by other evidence, or, by leave of the judge, prove that he has made at other times a statement inconsistent with his present testimony; but before such last-mentioned proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

Where in an indictment for rape a witness to whom the prosecutrix had made a statement shortly after the commission of the alleged offence, being asked on cross-examination as to the particulars of such statement gave an answer which was different from that which the prosecuting counsel was instructed she had made:—Held, that it was competent for the counsel for the prosecution in re-examination, to ask the witness whether she had not at other times made

a different statement, and one inconsistent with her present testimony, to certain persons named; and also to call such persons to give evidence of the statements so made to them, under 28 & 29 Vict. c. 18, s. 3. *Reg. v. Little*, 15 Cox, C. C. 319.

Calling Witnesses after Close of Case.]—After the cases for the prosecution and prisoner are closed, the judge will not, at the suggestion of the counsel for the prosecution, examine a witness not before called. *Reg. v. Haynes*, 1 F. & F. 666.

13. DECLINING TO ANSWER.

At what Stage Privileges Claimed.]—It makes no difference in the right of the witness to protection, that he had before answered in part, as he is entitled to claim the privilege at any stage of the inquiry; and no answer forced from him by the presiding judge (after such a claim) can be afterwards given in evidence against him. *Reg. v. Garbett*, 2 C. & K. 474; 1 Den. C. C. 236; 2 Cox, C. C. 448.

When Justified.]—If a witness claims the protection of the court, on the ground that his answer would tend to criminate himself, and there appears reasonable ground to believe that it would do so, he is not compellable to answer; and if obliged to answer notwithstanding, what he says must be considered to have been obtained by compulsion, and cannot be given afterwards in evidence against him. *Id.*

A witness is not only not bound to answer that which will criminate him, but he is not bound to answer anything that tends to criminate him. In a prosecution for libel, a witness is not bound to answer whether he has written a particular paragraph in a newspaper, but he must answer whether he knew whose writing it was, but he is not bound to name the person whose writing he knew it to be. *Rea v. Slaney*, 5 C. & P. 213.

On the trial of an information for bribery at a parliamentary election, filed by the attorney-general, in pursuance of a resolution of the House of Commons, a person, alleged in the indictment to have been bribed, was called as a witness; he refused to answer any question, on the ground that the answer would tend to criminate him. A pardon under the great seal was then handed to the witness, but he still refused to answer, upon which the judge compelled him to answer, and on his evidence the defendant was convicted:—Held, that the pardon took away the privilege of the witness so far as any risk of prosecution at the suit of the crown was concerned; and that, though the witness might still be liable to an impeachment by the House of Commons, notwithstanding the pardon, by reason of the 12 & 13 Will. 3, c. 2, yet that was so unlikely to happen that the witness could not be said to be in any real danger, and he was therefore rightly compelled to answer. *Reg. v. Boyes*, 1 B. & S. 311; 9 Cox, C. C. 32; 2 F. & F. 157; 30 L. J., Q. B. 301; 7 Jur., N. S. 1158; 5 L. T. 147; 9 W. R. 690.

To entitle a witness to the privilege of not answering a question as tending to criminate him, the court must see, from the circumstances of the case and the nature of the evidence which the witness is called to give, that there is reasonable

ground to apprehend danger to the witness from his being compelled to answer. If the fact of the witness being in danger is once made to appear, great latitude should be allowed to him in judging of the effect of any particular question. The danger to be apprehended must be real and appreciable, with reference to the ordinary operation of law, in the ordinary course of things, and not a danger of an imaginary character, having reference to some barely possible contingency. *Id.*

L. being called as a witness on the trial of a criminal information against K. was compelled to answer, notwithstanding his objection that such answer would tend to criminate him in certain actions for penalties, under the Corrupt Practices Acts, which were then pending against him:—Held, that it was immaterial to inquire whether he was or was not compelled to answer, as such issue could not affect a party in the cause. *Reg. v. Kinglake*, 18 W. R. 185.

Witness's Knowledge of Law presumed.]—The witness's knowledge of the law enabling him to decline to answer criminating questions must be presumed on the maxim *Ignorantia juris non excusat*. *Reg. v. Cote*, 4 L. R., P. C. 599; 42 L. J., M. C. 45; 29 L. T. 111; 21 W. R. 553; 9 Moore, P. C. C., N. S. 463.

The 11 & 12 Vict. c. 42, s. 18, requiring magistrates to caution the accused with respect to statements he may make in answer to the charge, is not applicable to witnesses asked questions tending to criminate them. *Id.*

Counsel supporting Claim.]—If a witness objects to answer questions on the ground that they tend to criminate him, the counsel on the opposite side cannot argue in support of the witness's objection. *Rea v. Adey*, 1 M. & Rob. 94.

14. EVIDENCE TO CHARACTER.

Obtained in Cross-Examination—Proof of Previous Conviction.]—If a prisoner's counsel elicits, by his cross-examination of the witnesses for the prosecution, a statement that the prisoner has borne a good character, evidence may be given of a previous conviction, just the same as if witnesses to character had been called on his behalf. *Reg. v. Gadbury*, 8 C. & P. 676.

On a trial for a felony after a previous conviction, if the prisoner's counsel obtains evidence of good character on cross-examination, this entitles the prosecutor to go into evidence of the previous conviction before the jury finds a verdict on the new charge, the same as if the prisoner had obtained evidence of good character by calling a witness. *Reg. v. Shrimpton*, 3 C. & K. 373; T. & M. 628; 2 Den. C. C. 319; 5 Cox, C. C. 387; 21 L. J., M. C. 37.

Obtained from Witnesses in ordinary Way.]—If evidence of good character is given on behalf of a prisoner, evidence of bad character may be given in reply. *Reg. v. Rowton*, L. & C. 520; 10 Cox, C. C. 25; 34 L. J., M. C. 57; 11 Jur., N. S. 325; 11 L. T. 745; 13 W. R. 436.

What Evidences Admissible.]—In either case the evidence must be confined to the prisoner's general reputation; and the individual opinion of the witness as to his disposition founded upon

his own experience and observation, is inadmissible. *Id.*

Evidence of particular facts cannot be given upon the question of character. *Id.*

Evidence of character must be evidence of general reputation only, and a witness's individual opinion respecting the character and disposition of the prisoner, with reference to the charge, is inadmissible. *Id.*

A man was indicted for an indecent assault, and upon the trial called witnesses, who gave him a good character as a moral and well-conducted man. A witness was then called by the prosecution, who was asked, "What is the prisoner's general character for decency and morality?" and in answer said, "I know nothing of the neighbourhood's opinion, because I was only a boy at school when I knew him; but my own opinion, and the opinion of my brothers, who were also pupils of his, is, that his character is that of a man capable of the grossest indecency and the most flagrant immorality."—Held, that the answer was not admissible in evidence. *Id.*

Upon an indictment for assaulting a peace officer in the execution of his duty, where the assault was committed by the prisoner in resisting his arrest by the officer on a charge of felony, the officer cannot, upon his examination in chief, be questioned as to his knowledge of the prisoner's character for the purpose of shewing that he had reasonable cause to suspect the prisoner of having committed the felony for which he was arrested. *Reg. v. Tubberfield*, L. & C. 495; 10 Cox, C. C. 1; 34 L. J., M. C. 20; 10 Jur., N. S. 1111; 11 L. T. 385; 13 W. R. 102.

The proper course under such circumstances is, to ask the officer generally whether he had reason to suspect the prisoner, leaving the prisoner's counsel to inquire into the grounds of suspicion, if he thinks fit to do so. *Id.*

Cross-Examining Witnesses to Character.]—It is not usual to cross-examine witnesses to character except the counsel cross-examining has some distinct charge on which to cross-examine them. *Reg. v. Hodgkiss*, 7 C. & P. 298.

Time for.]—In general, witnesses to character cannot be examined after verdict and before sentence, where the defendant might have examined them upon the trial. *Reg. v. Mullins*, 3 Cox, C. C. 526.

15. EVIDENCE TO CREDIT.

What Admissible.]—In order to impeach the character of a witness for veracity, witnesses may be called to prove that his general reputation is such that they would not believe him upon oath. *Reg. v. Brown*, 1 L. R., C. C. 70; 36 L. J., M. C. 59; 16 L. T. 364; 15 W. R. 795; 10 Cox, C. C. 453.

It is not essential that witnesses, who state that they would not believe another person on his oath, should have ever heard such person give evidence upon oath; as the real question is, whether the witnesses have such a knowledge of the person's character and conduct as enables them conscientiously to say that it is impossible to place any reliance on any statement that such person may make. *Reg. v. Bispham*, 4 C. & P. 392.

16. EVIDENCE OF IDENTITY.

Person against whom Bill Ignored.]—A person

indicted with others for an offence, but against whom the bill has been thrown out, may, if he is in custody at the time of the trial of the others, be placed at the bar to be identified as one who was in their company. *Reg. v. Deering*, 5 C. & P. 165.

Form of Question.]—A witness, called to prove that he had seen a prisoner at a particular spot at a certain time, added that he had since seen a number of men in gaol, and had pointed out one:—Held, that the following was a proper form of question to put to the witness—"Who did you point him out as being?" *Reg. v. Blackburn*, 6 Cox, C. C. 333.

It becoming necessary, on the part of the crown, to identify three other prisoners, charged in the same indictment with the party tried:—Held, that the counsel for the prosecution might ask in the most direct terms whether any of the prisoners was the person meant by the witness. *Watson's case*, 2 Stark. 116.

17. PRIVILEGED COMMUNICATIONS.

Solicitor—When not Retained.]—A prisoner was in custody on a charge of forgery, and was not allowed even to see his wife; he wrote to a friend "to ask Mr. G., or some other solicitor, whether the punishment was the same whether the names forged were those of real or fictitious persons." Mr. G. was not the prisoner's attorney, though he was an attorney:—Held, that this was not a privileged communication. *Reg. v. Brower*, 6 C. & P. 363.

The wife of A. went to B., an attorney, and produced a forged will to him, and asked him to advance money to A. on the property mentioned in it. B. was not then the attorney of A., or in any way acting as his solicitor. A.'s wife left the forged will with B., who made a copy of it. A. afterwards called on B., who told all that had occurred and returned him the forged will, declining to advance any money:—Held, that the conversation between A.'s wife and B. was not a privileged communication; and that, on the trial of A. for forgery, evidence might be given of it. *Reg. v. Farley*, 2 C. & K. 313; 1 Den. C. C. 197; 2 Cox, C. C. 72.

— When Retained.]—Indictment for forging the will of W. T., first, with intent to defraud the heir-at-law of the said W. T.; second, with intent to defraud some person or persons unknown. Quære, whether (under the circumstances) a valid objection could be taken to the will being produced in evidence by an attorney, at the trial, on the ground of its being a privileged communication. *Reg. v. Tylney*, 1 Den. C. C. 319; 18 L. J., M. C. 38; *S. C.*, nom. *Reg. v. Tufts*, 3 Cox, C. C. 160.

The solicitor of a bank is an admissible witness against the directors, of transactions of which he became cognizant in that character, although any communications to or by him, as their attorney, were privileged. *Reg. v. Brown*, 7 Cox, C. C. 442; *S. C.*, sub nom. *Reg. v. Esdaile*, 1 F. & F. 213.

H., who was tried for forging the will of S. J., had sent the forged will to his attorney, Mr. M., with some deeds of S. J., ostensibly for the purpose of asking his advice, but really that he

might find the will and act on it. It was afterwards produced by Mr. M. before the magistrates, when H. was charged before them of forging it. At the trial of H. for the forgery Mr. M. was called to produce the will, which he did, without any objection being taken. The officer of the court was proceeding to read it, when the prisoner's counsel objected to the reading of it, as being privileged in the hands of Mr. M. The judge directed it to be read in evidence:—Held, that it was properly so read, it not having been put into the hands of Mr. M. in professional confidence, even if that would have made a difference. *Reg. v. Hayward*, 2 C. & K. 234; 2 Cox, C. C. 23.

A prisoner was indicted for forging a will. The forged instrument had been given by the prisoner to his attorney, ostensibly for professional purposes, but, in the opinion of the judge, with some very different object. On objection that it was a privileged communication, and therefore could not be read:—Held, invalid. *Reg. v. Jones*, 1 Den. C. C. 166.

A., an attorney, was employed by B. as his solicitor, to put out money upon mortgage. C. applied to A. to procure him the advance of money on mortgage, and to act as his solicitor in procuring it. C. stated to A. that he was the owner of certain freehold lands, and produced a forged will in proof of his title, which he placed in the hands of A. B. advanced the money, A. acting as his solicitor by preparing the mortgage deeds:—Held, that on the trial of C. for uttering the forged will, A. was bound to produce the will and also to give evidence of what C. said to him as to the advance of the money. *Reg. v. Avery*, 8 C. & P. 596.

— **Letter written by Solicitor for Client.**—A letter written by a solicitor for a client making a claim for a lost parcel, alleged to contain valuable articles, is not inadmissible on the ground of privilege in a criminal case. But in order to make a client criminally responsible for a letter written by his solicitor it must be shewn that the letter was written in pursuance of the instructions of the client. A letter, by a solicitor written "in consequence" of an interview with his client is not equivalent to a letter written by the instructions of the client, and is not admissible in a criminal case against the client. *Reg. v. Downer*, 14 Cox, C. C. 486; 43 L. T. 445; 45 J. P. 52.

— **Letters written by Client to Solicitor.**—The real prosecutrix had communications with her attorney in reference to certain dealings with the prisoner. The attorney was called as a witness for the prosecution:—Held, that the letters written by the client to her attorney could not be put in by the prisoner's counsel. *Reg. v. Leverson*, 11 Cox, C. C. 152.

— **Statements made to Counsel.**—Held, that the prosecutrix and her attorney might be cross-examined in reference to any privileged communications as to which they had given answers to questions addressed to them by the counsel for the prosecution, but not in respect to such matters about which the attorney had volunteered information unasked. *Ib.*

— **In Presence of Prisoner.**—Held, also, that matters which transpired during interviews

at which the prisoner was present were not privileged. *Ib.*

In other Cases—The Confessional.—A Roman Catholic priest, called as a witness, is bound to answer the question from whom he received the property (a watch), alleged to be stolen, although delivered to him by a party in connexion with the confessional. *Reg. v. Hay*, 2 F. & F. 2.

18. MODE OF TAKING, AT TRIAL.

Before Second Jury.—A prisoner for felony was tried, but the jury was discharged, owing to being unable to agree. On being put on trial before a second jury, the judge, at the prisoner's request, instead of having the witnesses examined, simply called and swore them, and read over his notes, allowing liberty to examine and cross-examine each witness thereafter:—Held, that this was an irregular practice, whether the prisoner assented to it or not. *Reg. v. Bertrand*, 1 L. R., P. C. 520; 36 L. J., P. C. 51; 16 L. T. 752; 16 W. R. 9; 10 Cox, C. C. 618.

19. ADMISSIBILITY OF EVIDENCE.

a. Evidence of other Offences.

Where several Offences so Connected as to form one Transaction.—Where several felonies are so connected together as to form part of one entire transaction, evidence of them all may be given in order to prove a party indicted guilty of one. *Reg. v. Ellis*, 6 B. & C. 145; 9 D. & R. 174.

Upon a trial for breaking into a booking-office of a railway station, evidence was admitted that the prisoners had, on the same night, broken into three other booking-offices belonging to three other stations on the same railway, the four cases being all mixed up together. *Reg. v. Cobden*, 3 F. & F. 833.

A prosecutor will not be permitted to give in evidence several distinct offences, involving different transactions, under one indictment. *Reg. v. Young*, R. & R. C. C. 280, n.

But several offences connected with each other may be so given. *Ib.* And see *Reg. v. Thomas*, 2 East, P. C. 934.

A prisoner was indicted for night-poaching, and it was proposed to shew that on the occasion in question one of the prosecutor's gamekeepers had lost his coat, and that it was found in the prisoner's house. There was another indictment against the prisoner for stealing the coat:—Held, that this evidence was inadmissible, unless the prosecutor consented to an acquittal on the indictment for the larceny. *Reg. v. Westwood*, 4 C. & P. 547.

A. and B. when riding in a gig together, were robbed at the same time, A. of his money, B. of his watch, and violence used towards both. There was an indictment for the robbing of A. and another indictment for the robbing of B.:—Held, that on the trial of the first indictment, evidence might be given of the fact of the loss of the watch by B., and that it was found on one of the prisoners, but that no evidence ought to be given of any violence offered to B. by the robbers. *Reg. v. Rooney*, 7 C. & P. 517.

On an indictment for rape on a child under ten, evidence was admitted of subsequent perpetrations of the same offence on different days previous to complaint to the mother, it appearing

that the prisoner had threatened the child on the first occasion :—Held, that in such a case it was virtually one continuous offence. *Reg. v. Bearden*, 4 F. & F. 76.

Neither upon an indictment for stealing nor receiving can evidence be given that the prisoner had at the time, or previously, other stolen goods in his possession. *Reg. v. Oddy*, T. & M. 593; 2 Den. C. C. 264; 5 Cox, C. C. 210; 20 L. J., M. C. 108; 15 Jur. 517. See now 34 & 35 Vict. c. 112, s. 19, as to evidence of other cases on a charge of receiving.

A prisoner was indicted for stealing three articles. Having taken the first article, he returned in about two minutes and took the second, and then returned in half an hour and took the third :—Held, that the last taking was a distinct felony, and could not be given in evidence with the other two; but that the interval of time between the first and second taking was so short, that they must be considered as parts of the same transaction. *Reg. v. Birdseye*, 4 C. & P. 386.

Z. was indicted for feloniously having in his possession a lithographic stone, on which was engraved a portion of a Dutch coupon. A second lithographic stone was found in his lodgings, in respect of which another indictment had been preferred against him :—Held, that it was competent for the prosecution to give evidence on the trial of the first indictment of what was on the second stone. *Reg. v. Zeigert*, 10 Cox, C. C. 555.

A. was charged with having conspired with J. and others unknown to raise insurrections and obstruct the laws. It was proved that A. and J. were members of a Chartist lodge, and that A. and J. were at the house of the latter on a certain day, on the evening of which A. directed the people assembled at the house of J. to go to the race-course at P., whither J. and other persons had gone :—Held, on the trial of A. that evidence was receivable that J. had at an earlier part of the day directed other persons to go to the race-course; and it being proved that J. and an armed party of the persons assembled, went from the New Inn :—Held, that evidence might be given of what J. said at the New Inn, it being all one transaction. *Reg. v. Shellard*, 9 C. & P. 277.

In answer to an alibi set up on a trial for felony, the prosecutor may shew the circumstances under which the prisoner was seen near the spot in question; though those circumstances involve the commission of another felony by him. *Reg. v. Briggs*, 2 M. & Rob. 199.

When Admissible to shew Guilty Knowledge or Intent.—On an indictment for forgery, if a second uttering is made the subject of a distinct indictment, it cannot be given in evidence to shew a guilty knowledge in a former uttering. *Reg. v. Smith*, 2 C. & P. 633.

It cannot be shewn on the trial of an indictment that the prisoner has a general disposition to commit the same kind of offence as that charged against him; therefore an admission by a prisoner, charged with an infamous crime, that he had committed the same offence at another time, and with another person, and that he had a tendency to such practices, was rejected. *Reg. v. Cole*, Phil. Evid. 170.

In cases of receiving stolen property, see 34 & 35 Vict. c. 112, s. 19.

On an indictment for uttering counterfeit coin, to prove a guilty knowledge, evidence may be given of a subsequent uttering by the prisoner of counterfeit coin of a different denomination to that mentioned in the indictment. The difference in the denomination of the coin goes to the weight of evidence, but not to its admissibility. *Reg. v. Forster*, Dears. C. C. 456; 6 Cox, C. C. 521; 3 C. L. R. 681; 24 L. J., M. C. 134; 1 Jur., N. S. 407.

On an indictment for conspiring and unlawfully meeting for the purpose of exciting discontent and disaffection, resolutions passed at a former meeting, in another place, and at which one of the defendants presided, the proposed object of which meeting was to fix the meeting mentioned in the indictment, are admissible to shew the intention of such defendant in assembling and attending the meeting in question, at which he also presided. *Reg. v. Hunt*, 3 B. & A. 566.

C. was indicted in four counts for obtaining money by false pretences. It was shewn that he had inserted an advertisement in a newspaper containing statements found to be false, an address and "Trial Paper and Instructions, 1s." Six envelopes were found in his possession, each directed to the address given and containing an answer to the advertisement and twelve postage stamps. Two hundred and eighty-one other letters were produced by a post-office clerk which had been stopped by the postal authorities. Each letter contained twelve stamps, but no proof was adduced that they were written by the persons from whom they purported to come :—Held, that they were receivable in evidence. *Reg. v. Cooper*, 1 Q. B. D. 19; 45 L. J., M. C. 15; 33 L. T. 754; 24 W. R. 279; 13 Cox, C. C. 123. See also *Reg. v. Stenson*, 12 Cox, C. C. 111; 25 L. T. 666.

On an indictment for an assault with intent to commit a rape, evidence that the prisoner on a previous occasion had taken liberties with the prosecutrix is not receivable to shew the prisoner's intent. *Reg. v. Lloyd*, 7 C. & P. 318.

On an indictment for administering sulphuric acid to eight horses, with intent to kill them, the prosecutor may give evidence of administering at different times to shew the intent. *Reg. v. Mogg*, 4 C. & P. 363.

If persons who formed part of a mob obtain money from a person by advising him to give money to the mob, and are indicted for this as a robbery, the prosecutor, to shew that this was not bona fide advice, may give evidence of demands of money made by the same mob at other places, before or afterwards in the course of the same day, if any of the prisoners were present on those occasions. *Reg. v. Winchworth*, 4 C. & P. 441.

On the trial of an indictment for threatening to accuse the prosecutor of an infamous crime with intent to extort money, it was proved that the prisoner had gone up to the prosecutor and said to him, "If you do not give me a sovereign, I will charge you with an indecent assault :"—Held, that inasmuch as, if the jury believed that such language had been used by the prisoner, the intent was manifest, evidence for the prosecution tending to shew that the prisoner had made a similar charge two years before ought not to be admitted. *Reg. v. McDonnell*, 5 Cox, C. C. 153.

On the trial of an indictment for accusing a

person of an unnatural crime with intent to extort money—the prisoner being a soldier, and the accusation having been made while he was on duty as sentry—evidence of declarations made by him on a former occasion, on coming off guard, that he had obtained money from a gentleman by threatening to take him to the guard-house and accuse him of an unnatural crime, is admissible. *Reg. v. Cooper*, 3 Cox, C. C. 547.

Where a prisoner was indicted in one count for stealing coal from the mine of H. J. G., and in the same count for stealing from the mines of thirty other proprietors, and it appeared that all the coal so alleged to have been stolen, had been raised at one shaft:—Held, that proof of such charges might be relied on, in order to shew a felonious intent. *Reg. v. Bleasdale*, 2 C. & K. 765.

On an indictment for endeavouring to obtain an advance from a pawnbroker upon a ring by the false pretence that it was a diamond ring, evidence was admitted that two days before the transaction in question the prisoner had obtained an advance from a pawnbroker upon a chain which he represented to be a gold chain, but which was not so, and endeavoured to obtain from other pawnbrokers advances upon a ring which he represented to be a diamond ring, but which in the opinion of the witnesses was not so. This ring was not produced:—Held, that the evidence was properly admitted. *Reg. v. Francis*, 2 L. R., C. C. 128; 43 L. J., M. C. 97; 30 L. T. 503; 22 W. R. 663; 12 Cox, C. C. 612.

A. was indicted for obtaining a specific sum of money from B. by false pretences. He was employed by his master to take orders, but not to receive moneys, and he was proved to have obtained the specific sum from B. by representing that he was authorized by his master to receive it. Evidence of his having, within a week afterwards, obtained another sum from another person by a similar false pretence, such obtaining not being mentioned in the indictment in any way, is not admissible for the purpose of proving the intent when he committed the acts charged in the indictment. *Reg. v. Holt*, Bell, C. C. 280; 8 Cox, C. C. 411; 30 L. J., M. C. 11; 6 Jur., N. S. 1121; 3 L. T. 310; 9 W. R. 74.

To shew that Act not done Accidentally or by Mistake.]—Evidence of another felony is admissible to shew the animus of the prisoner, or if the act done was wilful or accidental. A. was indicted for setting fire to a rick on the 29th of March by discharging a gun close to it. Evidence was admitted of his having been seen near the same rick with a gun on the 28th, when it had been also set on fire. *Reg. v. Dossett*, 2 C. & K. 306; 2 Cox, C. C. 243.

Under an indictment for arson, where the prisoner is charged with wilfully setting fire to her master's house, the previous and abortive attempts to set fire to different portions of the same premises, are admissible, though there is no evidence to connect the prisoner with any of them. *Reg. v. Bailey*, 2 Cox, C. C. 311.

Upon an indictment for arson it is not competent for the prosecutor to shew that other fires, of which notice was given by the prisoner, were of a similar nature to the one in question, and different from those of which notice was given by other parties. *Reg. v. Regan*, 4 Cox, C. C. 335.

Upon a trial for arson with intent to defraud an insurance company, evidence that the prisoner had made claims on two other insurance companies in respect of fires which had occurred previously, and in succession, was admitted for the purpose of shewing that the fire which formed the subject of the trial was the result of design and not of accident. *Reg. v. Gray*, 4 F. & F. 1102.

On a charge of arson (the case turning on identity) evidence was rejected that, a few days previously to the fire, another building of the prosecutor was found on fire, and the prisoner was seen standing by, with a demeanor which shewed indifference or gratification. *Reg. v. Harris*, 4 F. & F. 342.

Upon a trial for felony, other felonies, which have a tendency to establish the scienter, may be given in evidence for that purpose. *Reg. v. Weeks*, L. & C. 18.

On an indictment for arson in setting fire to a rick, the property of A., evidence may be given of the prisoner's presence and demeanour at fires of other ricks, the property respectively of B. and C., occurring the same night, although those fires are the subject of other indictments against the prisoner, such evidence being important to explain his movements and general conduct before and after the fire of A.'s rick; but evidence is not admissible of threats, statements or particular acts pointing alone to the other indictments, and not tending to implicate or explain the conduct of the prisoner in reference to that fire. *Reg. v. Taylor*, 5 Cox, C. C. 136.

An indictment charged the prisoner with having embezzled three sums of 21l., the moneys of his employers, he being a clerk or servant. Evidence was given of the embezzlement of these sums, and it was then proposed to give evidence of other sums not charged in the indictment, but which had also been embezzled, to shew that if it should be contended that the sums charged in the indictment were subjects of a mistake in keeping the accounts, there being many other sums unaccounted for, admitting evidence of such sums would assist the jury in determining what value was to be attached to the suggestion:—Held, that such evidence was admissible. *Reg. v. Richardson*, 8 Cox, C. C. 448; 2 F. & F. 343.

A member of a friendly society was employed to receive weekly payments made by other members, and appropriated certain sums thus paid. Upon the trial, the books of the society were tendered generally in evidence, and received, although it was objected that the evidence ought to be confined to the entries forming the subject of the indictment:—Held, that they were rightly admitted. *Reg. v. Proud*, L. & C. 97; 9 Cox, C. C. 22; 31 L. J., M. C. 71; 8 Jur., N. S. 142; 5 L. T. 331; 10 W. R. 62.

— To negative Accident in Cases of Murder by Poisoning.]—*See ante*, MURDER.

b. In other Cases.

When Evidence shews another Felony.]—Although evidence offered in support of an indictment for felony may be proof of another felony, that circumstance does not render it inadmissible, if the evidence is otherwise receiv-

able. *Reg. v. Dossett*, 2 C. & K. 306; 2 Cox, C. C. 243.

It is no objection to evidence on an indictment for felony, that it also goes to shew the prisoner guilty of another felony. *Reg. v. Moore*, 2 C. & P. 235.

Infancy, how Proved.]—On an indictment against a defendant for obtaining goods by falsely pretending that he was of full age, a plea of infancy in an action brought against him is not admissible for the purpose of proving that he was a minor. *Reg. v. Simmonds*, 4 Cox, C. C. 277.

Rebutting Evidence of Prosecution by Letters not Proved to have been Received by them.]—A schoolmaster was charged with indecently assaulting a female pupil. Letters relating to the charge written by one of the scholars who was examined as a witness for the prosecution, may, on her denial of the handwriting, be proved and given in evidence on the part of the defendant for the purpose of affecting the witness's credit, and shewing the capacity of the scholars to conspire to make a false charge against him, although the prosecutrix is not proved to have received the letters, or had any knowledge of their contents. *Reg. v. McGavran*, 6 Cox, C. C. 64.

When Letters found upon Prisoner or in his Possession.]—On a charge of conspiring to murder, after it had been proved that the grenades by which the death in question had been caused had been ordered by A., but when there was no evidence to connect A. with the prisoner, it was proved that a letter in A.'s handwriting, bearing a memorandum in the hand of the prisoner, was found at his residence after his arrest upon the present charge.—Held, that such letter was admissible against him, not upon the ground that A. was a co-conspirator, but upon the ground that it was found in the possession of the prisoner, and was relevant to the inquiry. *Reg. v. Bernard*, 1 F. & F. 240.

On an indictment for forging a bank note, a letter purporting to come from the prisoner's brother, and left by the postman pursuant to its direction, at the prisoner's lodgings, after he was apprehended and during his confinement, but never actually in his custody, cannot be read in evidence against him on his trial. *Reg. v. Huett*, 2 Leach, C. C. 820.

On an indictment for a conspiracy, the letters of one of the defendants to the other are, under certain circumstances, admissible in evidence in his favour, to shew that he was the dupe of the other, and was not himself a participator in the fraud. *Reg. v. Whitehead*, 1 C. & P. 67.

A prisoner was taken into custody at the house of his brother on a charge of abduction; when he was taken, a letter was found in a writing desk in the room in which he and his brother were. The letter was directed to a person in the neighbourhood of the prisoner's late residence. The police officer was going to open it, when the prisoner told him it had nothing to do with the business that he had come about.—Held, that the letter was receivable in evidence on the trial of the prisoner for the abduction. *Reg. v. Barratt*, 9 C. & P. 387.

In a case of forging and uttering a forged bill, a letter written by the prisoner to a third person, saying that such person's name is on another

bill, and desiring him not to say that that bill is a forgery, is receivable in evidence to shew guilty knowledge. *Reg. v. Forbes*, 7 C. & P. 224.

Though a letter found upon a prisoner may be read, it is no evidence of the facts it states; they must be proved by other evidence. *Reg. v. Plumer*, R. & R. C. C. 264.

Letters which have never been in the custody of a prisoner, or any way adopted by him (being intercepted at the post-office), although directed to him, cannot be read in evidence against him. *Reg. v. Hevey*, 1 Leach, C. C. 232, 285.

Document partly in Prisoner's Writing found in Box not Proved to Belong to Prisoner.]—In a portmanteau not proved to belong to a prisoner on trial was found a paper folded like a letter, and containing in the inside what purported to be an inventory of goods pawned at different times. The inventory was not in his handwriting; but on the outside of the paper his name, and the word "private," both in his handwriting, were indorsed.—Held, that the contents of the paper were not admissible against him. *Reg. v. Hare*, 3 Cox, C. C. 247.

Card of Prosecutor to Prove his Name.]—Where an indictment charged that a person shot at one Harvey Garnett Phipps Tuckett.—Held, that Tuckett's card, though given to one of the witnesses in the presence of the party charged, could not be given in evidence against him on the trial to prove the name, as its contents were not shewn to have been communicated to him. *Reg. v. Douglas*, Car. & M. 193.

Evidence of Res gestæ.]—The false denial of the husband by the wife, though not directly proved to have been by his authority, or in his hearing, to custom-house officers, coming to his house to search for uncustomed goods immediately after discovered by them on his premises, is admissible, as a part of the *res gestæ*, on the trial of an information for penalties against the husband, for possessing the goods with a guilty knowledge. *Att.-Gen. v. Good*, M'Clel. & Y. 286.

See also *ante*, MURDER and RAPE.

20. DOCUMENTS.

Admissibility—Unstamped Documents.]—On an indictment for forging a bill of exchange, the bill may be given in evidence although it is not stamped. *Reg. v. Hawkeswood*, 1 Leach, C. C. 257; 2 East, P. C. 955; 2 T. R. 606, n.; S. P., *Reg. v. Morton*, 2 East, P. C. 955; 1 Leach, C. C. 259, n.

O. was indicted for embezzlement, and for the purpose of proving his identity as the person receiving certain things from S. & Co. for the prosecutor, an entry in a book of S. & Co. was read in evidence. The account was kept in four columns, in the first of which were entered the dates; in the second the name of the person on whose behalf the money was received; in the third the signature of the person receiving; and in the fourth the amount of the particular payment made by S. & Co.:—Held, that the entry, as explained by the evidence, amounted to a receipt; and that even for the purpose of proving identity, the whole entry could not be

read without a stamp, and that therefore the conviction was wrong. *Reg. v. Overton*, Dears. C. C. 308; 6 Cox, C. C. 277; 23 L. J., M. C. 29; 18 Jur. 134.

In the course of proving a conspiracy to defraud, carried into effect by prevailing upon the prosecutor to accept bills, a warrant of attorney, given to him for the purpose of inducing him to accept, reciting the acceptance, may be given in evidence, though unstamped. *Reg. v. Gempertz*, 9 Q. B. 824; 16 L. J., Q. B. 121; 11 Jur. 204.

Now by 33 & 34 Vict. c. 97, s. 17, *any document may be given in evidence in criminal proceedings, though not properly stamped.*

Notice to Produce—When to be Given.]—

On an indictment against A. and B. for burglary one of the articles stolen was a ring, which was described particularly by the prosecutor and proved to have had an inscription upon it, and to have been just like one he produced; one of the prisoners being proved to have shewn, soon after the burglary, a ring which in the opinion of the witnesses was just like the one produced and had an inscription upon it, but of which no notice to produce had been given. —Held, that the contents of the inscription on the prosecutor's ring could not be proved, and that as there had been no notice given to the prisoner to produce the ring shewn by him to the witness, the contents of the inscription upon it could not be proved. *Reg. v. Farr*, 4 F. & F. 396.

A solicitor was indicted for perjury in having sworn that there was no draft of a certain statutory declaration made by a client. No notice to produce this draft had been given to the solicitor, and upon his trial it was proved to have been last seen in his possession. Secondary evidence having been given of its contents:—Held, that in the absence of such notice, secondary evidence was inadmissible. *Reg. v. Elworthy*, 1 L. R., C. C. 103; 37 L. J., M. C. 3; 17 L. T. 293; 16 W. R. 207; 10 Cox, C. C. 579.

Where the witness, swearing to the words spoken by way of oath by the prisoner when he administered the same, said that he held a paper in his hand at the same time when he administered the oath, from which it was supposed that he read the words; yet held that parol evidence of what he in fact said, was sufficient without giving him notice to produce the paper. *Reg. v. Moore*, 6 East, 419.

On an indictment for arson on the prosecution of an insurance company, their books are not evidence of the insurance without notice to produce the policy. *Reg. v. Devan*, 1 Esp. 127.

A landowner by deed granted the right of shooting to G. over land of which B. afterwards became occupier. Upon an information against B. for entering and being in the daytime upon land in search of game, G. deposed that he had the exclusive right of shooting over the same, and that he had given no authority to B. to shoot; the deed was not put in evidence:—Held, that the conviction, unsupported by the production of the deed, was wrong. *Barker v. Davis*, 34 L. J., M. C. 140; 11 Jur., N. S. 651.

Where there has been a written agreement between master and servant, in which the nature of the service is defined, on an indictment for embezzlement against the latter, parol evidence

of the service is not admissible; unless notice has been given to produce the agreement. *Reg. v. Clapton*, 3 Cox, C. C. 126.

Upon an indictment for arson with intent to defraud an insurance company, the nature of the proceedings does not give notice to the prisoner to produce the policy, so as to dispense with actual notice to produce it. *Reg. v. Kitson*, Dears. C. C. 187; 6 Cox, C. C. 159; 22 L. J., M. C. 118; 17 Jur. 422.

In order to prove the service of the copy of an order of sessions, a witness was called, who stated, that the order having been drawn up from the minutes of the sessions on paper, and signed by the clerk of the peace, was read over by him to each of the defendants, whom he at the same time served with a true copy of it:—Held, sufficient; and that it was not necessary to give notice to produce the copy served in order to let in such evidence. *Reg. v. Mortlock*, 7 Q. B. 459; 2 New Sess. Cas. 108; 14 L. J., M. C. 153; 9 Jur. 621.

An indictment alleged that the prisoner, being in the employ of the Post-office, stole a post-letter, to wit, a post-letter directed and addressed as follows, that is to say (setting out the address), which contained property. At the trial, a witness having deposed that he employed a man to post a letter containing the property in question:—Held, that he might be asked how that letter was addressed, although no notice to produce the letter had been given. *Reg. v. Clude*, 3 Jur., N. S. 698.

— **On Postponement of Trial.]**—Where a trial has been postponed from one session to another, a notice to produce served on the prisoner in time for the first session is available for the subsequent one without any fresh service, and service on the prisoner in gaol is sufficient. *Reg. v. Robinson*, 5 Cox, C. C. 183.

— **Length of Time before Trial.]**—If a forged deed is in the possession of a prisoner, who is indicted for forging it, the prosecutor is not entitled to give secondary evidence of its contents, unless he has a reasonable time before the commencement of the assizes, given the prisoner notice to produce it. A notice given to the prisoner during the assizes is too late. *Reg. v. Haworth*, 4 C. & P. 254.

A prisoner tried at the assizes for arson, on Wednesday, the 20th of March, was on Monday, the 18th, served at the prison with a notice to produce a policy of insurance. The commission day was Friday, the 15th, and the prisoner's home was ten miles from the assize town:—Held, that the notice was served too late. *Reg. v. Ellicombe*, 5 C. & P. 522; 1 M. & Rob. 260.

Notice to produce policies of insurance, served on the prisoner's attorney on Tuesday evening, the prisoner then being in Maidstone and the policies twenty miles off, is sufficient when the trial takes place on Thursday. *Reg. v. Barker*, 1 F. & F. 326.

Where notice to produce a policy of insurance was given to the prisoner in the middle of the day preceding the trial, the prisoner's residence being thirty miles from the assize town:—Held, that secondary evidence of the policy could not be given. *Reg. v. Kitson*, Dears. C. C. 187; 6 Cox, C. C. 159; 22 L. J., M. C. 118; 17 Jur. 122.

— **Service on whom.]**—Service of notice to

produce on an attorney who had served a notice on behalf of the prisoner, as to an application to bail him upon the charge, is sufficient. *Reg. v. Bouher*, 1 F. & F. 486.

A notice to produce a document delivered to an attorney, suggested to be the prisoner's attorney, is (in the absence of evidence that he was so) not a valid notice, so as to enable secondary evidence to be given; and the attorney was not allowed to be asked whether he had shewn the notice to his client. *Reg. v. Downham*, 1 F. & F. 386.

Secondary Evidence—When Admissible.]—When a false pretence is contained in a letter which is lost, the prisoner may be convicted, if parol evidence is given of the contents of the letter. *Reg. v. Chadwick*, 6 C. & P. 181.

Where perjury is assigned upon a written instrument, subsequently lost, secondary evidence is admissible. *Reg. v. Milnes*, 2 F. & F. 10.

If a prisoner has said that he has destroyed a deed which he is charged with forging, no notice to produce it will be necessary. *Reg. v. Haworth*, 4 C. & P. 254.

Where perjury is alleged as having been committed before justices at petty sessions on the hearing of a charge contained in a written information, that information must be produced, or its loss or destruction proved, before secondary evidence of its contents can be given on the trial of an indictment for perjury. *Reg. v. Dillon*, 14 Cox, C. C. 4.

On an indictment for uttering a forged deed, it appeared that the deed alleged to have been forged was produced in evidence by the prisoner's attorney on the trial of an ejectment, in which the prisoner was lessor of the plaintiff; and that after the trial it was returned to the prisoner's attorney:—Held, that if the prisoner did not produce the deed, he having had notice to produce it, secondary evidence might be given of its contents, without calling his attorney to prove what he had done with the deed. *Reg. v. Hunter*, 4 C. & P. 128.

If, as secondary evidence of the contents of a deed, the draft is given in evidence, and, in the draft, words are abbreviated which in the setting out of the deed in the indictment are put in words at length, it will be for the jury to say whether they think that the words abbreviated in the draft were inserted at length in the deed itself. *Id.*

On an indictment for the larceny of a bill of exchange, obtained from the prosecutor, under a pretence of discounting it, parol evidence of the bill may be given after proof of a subpoena duces tecum given to the person in whose possession it was shewn to be previously to the trial, but who did not attend. *Reg. v. Aickles*, 1 Leach, C. C. 294; 2 East, P. C. 675.

Maps and Plans—Form of.]—A map or a plan prepared for the purpose of a trial ought not to contain any reference to transactions and occurrences which are the subject-matter of the investigation before the court, and not existing when the survey was made; and if it does, and the objection is taken, the court will not allow the jury to look at it. *Reg. v. Mitchell*, 6 Cox, C. C. 82.

Proof of Civil Proceedings.]—On the trial of an indictment alleging perjury upon the hearing

of a civil action, the production of a copy of the writ and pleadings from the record and writ clerk's office is evidence that an action was pending. *Reg. v. Scott*, 2 Q. B. D. 415; 46 L. J., M. C. 259; 36 L. T. 476; 25 W. R. 697; 13 Cox, C. C. 594.

Refreshing Memory of Witnesses.]—The prisoner was a timekeeper, and C. was pay clerk, in the employment of a colliery company. It was the duty of the prisoner every fortnight to give a list of the days worked by the workmen to a clerk who entered the days and the wages due in respect of them in a time book. At pay time it was the duty of the prisoner to read out from the time book the number of days worked by each workman to C., who paid the wages accordingly. And C. saw the entries in the time book while the prisoner was reading them out. Upon the trial of an indictment charging the prisoner with obtaining money by false pretences:—Held, that C. might refresh his memory by referring to the entries in the time book in order to prove the sums paid by him to workmen. *Reg. v. Langton*, 2 Q. B. D. 296; 46 L. J., M. C. 136; 35 L. T. 527; 13 Cox, C. C. 345.

Bankruptcy—Notices in the London Gazette—Cuttings from the Gazette.]—A petition in bankruptcy having been presented against the prisoner in the D. County Court, the court made an order that the publication of a notice of the petition in the London Gazette should be deemed service of the petition on the prisoner. The prisoner did not appear according to this notice, and there was no evidence that it had come to his knowledge. The prisoner was adjudicated bankrupt in his absence, and divers proceedings in the bankruptcy took place. Subsequently thereto the prisoner was arrested, and afterwards examined in court touching his affairs by the trustee in the bankruptcy, and the result was that he was indicted and convicted for various offences under the Bankruptcy Act. On the trial, in proof of the publication of the order of the county court in the Gazette, the file of the proceedings in the Bankruptcy Court was produced, containing a cutting from the Gazette of the advertisement of the order of the county court and notice to appear:—Held, that this cutting from the Gazette was improperly received as evidence of the publication of the notice in the London Gazette, and that the conviction could not be sustained. *Reg. v. Lowe*, 15 Cox, C. C. 286; 52 L. J., M. C. 122; 48 L. T. 768; 47 J. P. 535.

Proof of Handwriting—By whom.]—A prisoner's handwriting may be proved by witnesses who have seen him write. *Reg. v. Hensey*, 2 Ld. Ken. 366; 1 Burr. 642.

A person who has received letters purporting to come from a party, and has acted on those letters, may prove the handwriting of such party. *Reg. v. Slaney*, 5 C. & P. 213.

A policeman who has only once seen a prisoner write, and that since suspicion has been excited against him with reference to the charge upon which he is tried, and upon an opportunity taken by the policeman with the view of being able to speak to his handwriting, is not an admissible witness to prove that a document, the foundation of the charge against a prisoner, is in his handwriting. *Reg. v. Crouch* 4 Cox, C. C. 163.

— **Comparison.**—By 28 & 29 Vict. c. 18, s. 8, in all criminal cases, comparison of a disputed writing with any writing, proved to the satisfaction of the judge to be genuine, shall be permitted to be made by witnesses; and such writings, and the evidence of witnesses respecting the same, may be submitted to the court and jury as evidence of the genuineness or otherwise of the writing in dispute.

— **Proof of Documents by Attesting Witness.**—By 28 & 29 Vict. c. 18, s. 7, in all criminal cases it shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite, and such instrument may be proved as if there had been no attesting witness thereto.

— **Letter of Instruction from Lords of Treasury.**—A letter of instruction from the lords of the Treasury, signed by three lords of the Treasury, is admissible upon proof of the handwriting of the three persons whose names were subscribed to it, without producing the commission. *Re v. Jones*, 2 Camp. 131.

— **That Indictment Found.**—An allegation in an indictment, "that at the general quarter sessions of the peace holden at U., in and for the county of M., on Monday, the 10th of July, 1826, before certain of his majesty's justices of the peace assigned, &c., a certain bill of indictment against S. H. G. was duly preferred and found," is only proved by a regular record of the indictment and caption; and an examined copy of the mere indictment without any caption, together with the minute-book of the sessions, produced by the deputy clerk of the peace, and from which he reads entries in his own handwriting shewing the time and place of holding the sessions, is not sufficient, although no record has in fact been drawn up. *Re v. Smith*, 8 B. & C. 341.

— **Production and Inspection, when Ordered.**—On an indictment in the Central Criminal Court, for obtaining money by a false pretence, that a parcel contained certain letters of the prosecutrix to the prisoner, which he had promised, for a valuable consideration, to give up, and which had been seized under a search warrant, a judge on the rota for the session, after the session had opened, made an order in favour of the prisoner for an inspection of the letters. *Reg. v. Colucci*, 3 F. & F. 103.

— **Privileges of Solicitor.**—A solicitor for a prisoner is bound to produce a document, when the prisoner is charged with an offence in respect of such document. *Reg. v. Brown*, 9 Cox, C. C. 281. See cases ante, col. 784.

— **Letters—Proof by Post-marks.**—The post-office marks, in town or country, proved to be such, are evidence that the letters on which they are were in the office to which those marks belong at the time those marks specify. *Re v. Plumer*, R. & R. C. C. 264.

— **Reading at Trial.**—If a letter, written by one of several prisoners, is read in evidence, and in this letter the names of the other prisoners are mentioned, these names must not be omitted in the reading of the letter, but the judge will

tell the jury to pay no attention to the letter, except so far as it affects the writer. *Re v. Fletcher*, 4 C. & P. 250.

21. PREVIOUS CONVICTIONS, RECORDS, AND JUDGMENTS.

— **Proof of.**—By the Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), s. 18, a previous conviction may be proved in any legal proceeding whatever against any person by producing a record or extract of such conviction, and by giving proof of the identity of the person against whom the conviction is sought to be proved with the person appearing in the record or extract of conviction to have been convicted:

A record or extract of a conviction shall, in the case of an indictable offence, consist of a certificate containing the substance and effect only (omitting the formal part of the indictment and conviction), and purporting to be signed by the clerk of the court, or other officer having the custody of the records of the court by which such conviction was made, or purporting to be signed by the deputy of such clerk or officer; and in the case of a summary conviction, shall consist of a copy of such conviction, purporting to be signed by any justice of the peace having jurisdiction over the offence in respect of which such conviction was made, or to be signed by the proper officer of the court by which such conviction was made, or by the clerk or other officer of any court to which such conviction has been returned:

A record or extract of any conviction made in pursuance of this section shall be admissible in evidence without proof of the signature or official character of the person appearing to have signed the same:

A previous conviction in any one part of the United Kingdom may be proved against a prisoner in any other part of the United Kingdom; and a conviction before the passing of this act shall be admissible in the same manner as if it had taken place after the passing thereof:

A fee not exceeding five shillings may be charged for a record of a conviction given in pursuance of this section:

The mode of proving a previous conviction authorized by this section shall be in addition to and not in exclusion of any other authorized mode of proving such conviction.

By 14 & 15 Vict. c. 99, s. 13, whenever in any proceeding whatever it may be necessary to prove the trial and conviction or acquittal of any person charged with any indictable offence, it shall not be necessary to produce the record of the conviction or acquittal of such person, or a copy thereof, but it shall be sufficient that it be certified or purport to be certified under the hand of the clerk of the court or other officer having the custody of the records of the court where such conviction or acquittal took place, or by the deputy of such clerk or other officer, that the paper produced is a copy of the record of the indictment, trial, conviction and judgment or acquittal, as the case may be, omitting formal parts thereof.

The 14 & 15 Vict. c. 99, s. 13, which allows a criminal record to be proved by a certificate of the officer having custody of the record omitting the formal parts, applies to proof in civil as well as in criminal proceedings. *Richardson v. Willis*,

8 L. R., Ex. 69; 42 L. J., Ex. 15; 27 L. T. 828; 12 Cox, C. C. 351.

If a plaintiff, in an action for a malicious prosecution, offers to prove at the trial the original record of the indictment and acquittal, or a true copy thereof, such evidence must be received, though there was no order of the court, or fiat of the attorney-general, allowing the plaintiff a copy of such record; but the officer, who without such authority produces the record, or gives a copy of it to the party, is answerable for the contempt of court in so doing; and the judge at nisi prius will not compel him to produce the record in evidence, without such authority. *Legatt v. Tollerrey*, 14 East, 303.

Where a party suing for a malicious prosecution had obtained a copy of the indictment by virtue of the attorney-general's fiat, granted under a mis-statement as to the view entertained by the judge before whom the indictment was tried, the court refused to stay the proceedings, or to prevent the plaintiff from using on the trial the copy so obtained. *Browne v. Cummings*, 5 M. & R. 118; 10 B. & C. 70.

On an indictment on the prosecution of a private individual for keeping a common gaming-house, the solicitor of the treasury was allowed to have a new record of nisi prius engrossed, and the postea and verdict indorsed from the judge's notes, on an affidavit that the postea could not be found, and that the solicitor of the treasury was instructed by the secretary of state to ask for the judgment of the court. *Rea v. Oldfield*, 3 B. & Ad. 659, n.

The proper proof that a prisoner was in lawful custody, under a sentence of imprisonment passed at the assizes, is, by the proof of the record of his conviction; and neither the production of the calendar of the sentences signed by the clerk of the assize, and by him delivered to the governor of the prison, nor the evidence of a person who heard sentence passed, is sufficient for this purpose. *Reg. v. Bourdon*, 2 C. & K. 366.

— **Of Conviction and Identity.**—A previous summary conviction, which, under 14 & 15 Vict. c. 99, s. 13, is required to be proved by a certified copy, also requires proof of the prisoner's identity as under 7 & 8 Geo. 4, c. 28, s. 11, which remains in this respect as it stood before. The identity may be proved by evidence from which a jury may draw the conclusion that he is the same person named in the certificate, although no witness saw him convicted at his trial. *Reg. v. Leng*, 1 F. & F. 77.

— **Identity, how Proved.**—In order to prove the identity of a prisoner who is named in a certificate of a previous conviction, it is not necessary to call a witness who was present at the trial to which the certificate relates; it is sufficient to prove that the prisoner is the person who underwent the sentence mentioned in the certificate. *Reg. v. Crafts*, 9 C. & P. 219.

It is sufficient evidence of a previous summary conviction, to shew that the certificate of conviction and the warrant agree, and that the prisoner was received into custody under the warrant, without further proving identity. *Reg. v. Levy*, 8 Cox, C. C. 73.

— **Certificate, when Admissible.**—A certificate of a conviction, made at the quarter

sessions for a borough, purporting to be signed by a person described therein as deputy clerk of the peace of the borough, and having the custody of the records of the quarter sessions, is admissible in evidence, as purporting to be made by an officer having the custody of the records of the court where the conviction was made, within 5 Geo. 4, c. 84, s. 24, although the 5 & 6 Will. 4, c. 76, gave no power to appoint a deputy clerk of the peace for a borough within that act. *Reg. v. Parsons*, 1 L. R., C. C. 24; 35 L. J., M. C. 167; 12 Jur., N. S. 436; 14 L. T. 450; 14 W. R. 662.

A person de facto filling an office, carrying with it the custody of the records of the court, may lawfully give such a certificate, although he may not hold such office de jure. *Ib.*

Indictment—Form of.]—It is no objection to an indictment that a previous conviction is stated at the beginning of it, by way of introductory averment, instead of at the end, in the form of a separate count. *Reg. v. Hilton*, Bell, C. C. 20; 8 Cox, C. C. 87; 28 L. J., M. C. 28; 5 Jur., N. S. 47; 7 W. R. 59.

— **Arraignment on.]**—If, to prevent prejudice, the prisoner, at the request of his counsel, has not been arraigned on the charge of the previous conviction before the verdict has been given on the subsequent charge, he may afterwards be arraigned thereon, and the jury may afterwards inquire respecting it. *Ib.*

Mode of Conducting Case.]—On a trial for felony after a previous conviction the prisoner is to be arraigned on the whole indictment, and the jury is to have the new charge only stated to them, and if no evidence to character is given, nothing is to be said to the jury of the previous conviction till they have given their verdict on the new charge, and then, without being re-sworn, the jury is to hear the statement of the previous conviction, and the proof of it. *Reg. v. Shuttleworth*, 3 C. & K. 375; T. & M. 626; 2 Den. C. C. 351; 5 Cox, C. C. 369; 21 L. J., M. C. 36; 15 Jur. 1066.

C., with others, was charged in the first count of an indictment with larceny from the person. The indictment contained two other counts, each charging a previous conviction against C.:—Held, that any number of previous convictions may be alleged in the same indictment, and, if necessary, proved against the prisoner. *Reg. v. Clark*, Dears. C. C. 198; 3 C. & K. 367; 6 Cox, C. C. 210; 22 L. J., M. C. 135; 17 Jur. 582.

Proof of Previous Conviction of Witness Admissible, though Immaterial to Issue.]—A party to a cause who gives evidence in support of his case may be cross-examined as to whether he has been ever convicted of a felony or misdemeanor, and if he denies or refuses to answer it, the opposite party may prove such conviction under s. 25 of the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), although the fact of such conviction be altogether irrelevant to the matter in issue in the cause. *Ward v. Sinfield*, 49 L. J., C. P. 696; 43 L. T. 252.

VII. VERDICT.

Vacating after being Recorded.]—Though a verdict is recorded, yet if it appears promptly,

that it is not according to the intention of the jury, it may be vacated and set right. *Reg. v. Parkin*, 1 M. C. C. 45.

Power of Court to enter for Defendant.]—Where a misdemeanor is tried in the Queen's Bench Division, and a verdict of guilty has been found, the court has power on motion to enter a verdict for the defendant. *Reg. v. Platts*, 28 W. R. 915.

Validity—Good Finding on bad Count and Vice Versa.]—A good finding on a bad count in an indictment, and a bad finding on a good count, stand on the same footing; both being nullities. *O'Connell v. Reg. (in error)*, 11 C. & F. 155; 9 Jur. 25.

— Different Counts.]—A verdict of not guilty can be entered on one count, and of guilty on another. *Reg. v. Craddock*, 14 Jur. 1031.

Where a count contains only one charge against several defendants, the jury cannot find any one of the defendants guilty of more than one charge. *O'Connell v. Reg. (in error)*, 11 C. & F. 155; 9 Jur. 25.

— Recommendation to Mercy.]—A jury returned a verdict of guilty on an indictment, but recommended the defendant to mercy on the ground that perhaps he did not know that he was acting contrary to law:—Held, that the conviction was not invalidated by this addition to the verdict. *Reg. v. Crawshaw*, Bell, C. C. 303; 8 Cox, C. C. 375; 9 W. R. 38.

Refusal to Receive.]—Indictment for murder. Defence that deceased committed suicide. Verdict guilty, the jury adding that they believed the act was committed without premeditation. The judge refused to receive such a verdict, and directed the jury to say guilty or not guilty. *Reg. v. Maloney*, 9 Cox, C. C. 6.

Effect of Abandonment of Counts.]—A first count charged the prisoners under 9 Geo. 4, c. 69, s. 2, with being found on land at night armed with a gun for the purpose of taking game, by A. and B., who had lawful authority to apprehend them, and that they, being about to apprehend them, the prisoners with a weapon assaulted and wounded them; a second count charged an unlawful wounding; and the third and fourth counts charged a common assault. The counsel for the prosecution abandoned the last three counts, and elected to stand on the first count. The jury returned a verdict of guilty of night poaching and a common assault. Upon a question raised whether the prisoners could be convicted of a common assault upon the first count:—Held, that the prosecuting counsel having withdrawn the counts for common assault from the jury, the question ought not to be entertained. *Reg. v. Day*, 22 L. T. 452.

Reconsideration of—Alteration in Book.]—At sessions the jury gave a special verdict of not guilty, and it was entered in the book of the clerk of the peace. Afterwards, the chairman told the jury they must reconsider their verdict; and they gave a verdict of guilty generally, but recommended the defendant to mercy on account of his not doing the act with a malicious intent; and the verdict was then altered in the book of

the clerk of the peace. The court refused to interfere by mandamus to cancel the alterations. *Reg. v. Suffolk (Justices)*, 5 N. & M. 139; 1 H. & W. 313.

Where a jury returns what the judge considers to be an improper verdict, he may direct them to reconsider it, and is not bound to record it unless they insist upon his doing so. Where the jury reconsider their verdict and alter it, the second is the real verdict of the jury. *Reg. v. Meany*, L. & C. 213; 9 Cox, C. C. 231; 32 L. J., M. C. 24; 8 Jur., N. S. 1161; 7 L. T. 393; 11 W. R. 41.

One of the jury pronounced a verdict of not guilty, which was entered by the clerk of the peace in his minute book, and the prisoner was discharged. Other jurymen then interfered, and said their verdict was guilty; whereupon the prisoner was brought back, and the jury was again asked for their verdict, when they all said it was guilty, and that they had been unanimous. A verdict of guilty was then recorded:—Held, that the verdict was properly amended; and the conviction must stand. *Reg. v. Vadden*, Dears. C. C. 229; 6 Cox, C. C. 226; 23 L. J., M. C. 7; 17 Jur. 1014.

Amendment.]—An erroneous entry of the verdict in criminal cases may be amended from the judge's notes, but not from the recollection of the judge. *Reg. v. Virrier*, 12 A. & E. 317; 4 P. & D. 161.

VIII. NEW TRIAL.

In what Cases.]—No new trial can be granted in cases of felony. *Reg. v. Mawbey*, 6 T. R. 638.

But with respect to misdemeanors, it is entirely discretionary in the court whether it will grant or refuse a new trial. *Id.*

A new trial was granted on the ground of the improper reception of depositions in a case of felony removed by certiorari. *Reg. v. Seafie*, 17 Q. B. 238.

But according to the common law there is no power to grant a new trial in a case of felony. *Reg. v. Bertrand*, 1 L. R., P. C. 520; 36 L. J., P. C. 51; 16 L. T. 752; 16 W. R. 9.

In a charge of felony where the indictment is good and the prisoner has been given in charge to a jury in due form of law empanelled, chosen and sworn, and a verdict has been returned and judgment given, the proceedings are final, and a venire de novo will not lie. *Reg. v. Murphy*, 2 L. R., P. C. 535; 38 L. J., P. C. 53; 21 L. T. 598; 17 W. R. 1047.

—Where Defendant is Acquitted.]—No new trial can be granted on an indictment for perjury, where the defendant is acquitted. *Reg. v. Brice*, 2 B. & A. 606; 1 Chit. 352.

After a verdict for a defendant, upon an indictment for the non-repair of a highway, the court refused an application for a new trial, on the ground of the improper rejection of evidence; but suspended the judgment in order that another indictment might be preferred. *Reg. v. Sutton*, 5 B. & Ad. 52; 2 N. & M. 57; *S. P.*, *Reg. v. Wandswoth*, 1 B. & A. 63; 2 Chit. 282; *Reg. v. Challowcombe*, 6 Jur. 481.

A new trial will not be granted, after an acquittal upon an indictment for obstructing a

highway, on the ground that the verdict is against the evidence. *Reg. v. Johnson*, 29 L. J., M. C. 133; 6 Jur., N. S. 553; 8 W. R. 236.

Upon the trial of an indictment for obstructing a highway the defendant was acquitted:—Held, that a new trial on the ground of misreception of evidence, misdirection, and that the verdict was against evidence, could not be granted. *Reg. v. Dunean*, 7 Q. B. D. 198; 50 L. J., M. C. 95; 44 L. T. 521; 30 W. R. 61; 45 J. P. 456; 14 Cox, C. C. 571.

A new trial was refused after a verdict of not guilty, upon an indictment for not repairing a road, when the verdict did not bind the right. *Rea v. Burbon*, 5 M. & S. 392.

The court refused to grant a rule nisi for a new trial after a verdict for the defendant upon an indictment for non-repair of a church-yard fence, which was moved for on the ground of the verdict being against evidence. *Rea v. Reynell*, 6 East, 315; 2 Smith, 406.

Not granted even for a misdirection, after an acquittal on an indictment for a misdemeanor. *Rea v. Cohen*, 1 Stark. 516.

Where in an indictment not charging an offence for which the defendant, if guilty, might suffer fine and imprisonment, a civil right comes in question, and the right would be bound by the verdict, a new trial may be granted after a verdict for defendant. By Lord Campbell, C. J., and Crompton, J. *Reg. v. Russell*, 5 El. & Bl. 942; 23 L. J., M. C. 173; 18 Jur. 1022. See *Reg. v. Botfield*, 1 Jur., N. S. 594, n.

But by Coleridge, J., wherever the substance of a criminal proceeding is civil, a new trial may be granted after a verdict for the defendant, on the ground either of misdirection, or of the verdict being against the evidence. *Ib.*

Held, accordingly, by Lord Campbell, C. J., and Crompton J. (Coleridge, J., dissenting), that where an indictment charged the defendant with erecting an obstruction to the navigation of the Menai Straits, and the right to an oyster fishery was in question, the court ought not to grant a new trial after verdict for the defendant. *Ib.*

On what Grounds—Evidence received in absence of Judge.]—When it is alleged that the jury has received evidence in the absence of the judge and of the prisoner, it is for the court before whom the trial takes place to investigate the facts, and ascertain whether the alleged irregularity has occurred: but quære whether if such irregularity is so found to have occurred, the court has jurisdiction to order a venire de novo, as for a mis-trial. *Reg. v. Martin*, 1 L. R., C. C. 378; 41 L. J., M. C. 113; 26 L. T. 778; 20 W. R. 1016; 12 Cox, C. C. 204.

All Jury not present when Verdict given.]—If all the jury were not present when a verdict of guilty was delivered against a defendant for the publication of a libel, and it is uncertain whether they all heard such verdict pronounced by the foreman, the court will, with the consent of the defendant, grant a new trial. *Rea v. Wooler*, 2 Stark. 111.

Jurymen not all Summoned.]—Upon the trial of an information for a libel by a special jury, only ten jurymen appeared, and two talesmen were sworn to make up the jury: it is no ground for a new trial, that two of the non-

attending special jurymen named in the panel had not been summoned, though it appeared that this fact was unknown to the defendant until after the trial. *Rea v. Hunt*, 4 B. & A. 430.

Juryman who served on Grand Jury.]—After a special jury had been sworn on the trial of an indictment for a misdemeanor, it was discovered that one of them had sat on the grand jury who found the bill. It was proposed that he should leave the box, but the defendants objected to this course: the trial proceeded, and they were found guilty. Under these circumstances, the court refused to grant a rule for a new trial on the ground of mis-trial. *Reg. v. Sullivan*, 1 P. & D. 96; 8 A. & El. 831.

Juryman with no Qualification—Answering to Name.]—Where on the trial of an indictment for perjury, it was necessary to swear talesmen from the common jury panel, and one J. Williams being called, his son R. H. Williams (at the request of his father, and without collusion) appeared for him, and was sworn and served on the jury, he not being of age, neither having a qualification, not being on the panel:—Held, that there was a mis-trial, and a rule obtained for a new trial was made absolute. *Rea v. Tremaine*, 7 D. & R. 684; 5 B. & C. 254.

Upon a trial of a prisoner for murder, the name of Joseph Henry Thorne was called from the jury panel as a juror to try him, when William Thorniley, who was also upon the jury panel, by mistake answered to his name and went into the jury-box. He was sworn and the prisoner was convicted and sentenced. The mistake was discovered next day:—Held, that there had been no mis-trial, but quære whether the objection made would be matter of error. *Reg. v. Mellor*, Dears. & B. C. C. 468; 7 Cox, C. C. 454; 27 L. J., M. C. 121; 4 Jur., N. S. 214.

Of Surprise.]—A new trial will be granted on an indictment for a misdemeanor on the ground of surprise, as in civil cases. *Reg. v. Whitehouse*, Dears. C. C. 1.

Where, upon trial of an indictment for a misdemeanor, a witness examined before the grand jury was not examined at the trial, and a witness not examined before the grand jury was:—Held, that it was not such a surprise upon the defendants as entitled them to a new trial. *Rea v. Hollingberry*, 6 D. & R. 345; 4 B. & C. 329.

Jury separating for the Night in Misdemeanor.]—Upon the trial of an indictment for a misdemeanor, which continued more than one day, the jury, without the knowledge or consent of the defendants, separated at night:—Held, that the verdict was not therefore void; and that it formed no ground for granting a new trial, it not appearing that there was any suspicion of any improper communications having taken place. *Rea v. Kinnear*, 2 B. & A. 462.

Whether one of several Defendants entitled to.]—Where several defendants are tried at the same time for a misdemeanor, and some are acquitted and some convicted, the court may grant a new trial as to those convicted, if they think the conviction improper. *Rea v. Mawbey*, 6 T. R. 619.

Where all of several defendants in an indictment for conspiracy are found guilty, if one of

them shews himself entitled to a new trial, on grounds not affecting the others, the new trial will nevertheless be granted. *Reg. v. Gompertz*, 9 Q. B. 824; 16 L. J., Q. B. 121; 11 Jur. 204.

Practice on—Time to move.]—A defendant, convicted on a criminal prosecution, cannot move for a new trial after the first four days of the next term; though, if it appears to the court at any time before judgment, that injustice has been done by the verdict, they will interpose and grant a new trial. *Reg. v. Holt*, 5 T. R. 486.

A motion for a new trial on behalf of a defendant in an indictment, must be made within the first four days of term, though the argument will be postponed till he is brought up for judgment. *Reg. v. Hetherington*, 5 Jur. 529.

Where a new trial is to be moved for by a defendant in a criminal case, intimation must be given to the court during the first four days of term that the party is prepared to move. *Reg. v. Newman*, 1 El. & B. 268; Dears. C. C. 85; 22 L. J., Q. B. 156; 17 Jur. 617.

— Affidavits.]—Affidavits of new facts are not in general admissible in criminal cases, on a motion for a new trial, unless there was some surprise on the defendant at the trial: but affidavits of the death of a person may be received to account for his not having been examined as a witness. *Reg. v. Bowditch*, 2 Chit. 278.

— Personal Attendance.]—All the defendants convicted upon an indictment for a conspiracy must be present in court when a motion for a new trial is made on behalf of any of them. *Reg. v. Teal*, 11 East, 307; *S. P.*, *Reg. v. Ashew*, 3 M. & S. 9; *Reg. v. Cochrane (Lord)*, 3 M. & S. 10, n.

Where a defendant convicted of a misdemeanor at the assizes was committed to the county gaol to abide the judgment of the court, and was detained for no other cause; on a suggestion of his inability to pay the expense of bringing himself up, the court allowed a motion for a new trial to be made without his personal attendance. *Reg. v. Boltz*, 8 D. & R. 65.

It seems that the consent of the counsel for the prosecution cannot dispense with the rule which requires the presence of defendants convicted upon a criminal proceeding, during a motion for a new trial. *Reg. v. Fielder*, 2 D. & R. 46.

A defendant in the actual custody of the marshal upon criminal process, in consequence of an indictment in the King's Bench, need not be present when a motion for a new trial is made on his behalf. *Reg. v. Hollingberry*, 6 D. & R. 344; 4 B. & C. 329.

A defendant sentenced to transportation cannot move for a new trial without appearing in court, though the sentence has been passed at the assizes under 11 Geo. 4 & 1 Will. 4, c. 70, s. 9. *Reg. v. Cudwell*, 17 Q. B. 503; 2 Den. C. C. 372, n.; 21 L. J., M. C. 48; 15 Jur. 101.

Seem, that where there are several defendants, all need not be present in court in order to entitle one or more of such defendants to move for a new trial. *Ib.*

In moving for a new trial where the defendant has been found guilty of a nuisance in obstruct-

ing a public sewer, and where he is liable not to personal punishment but to a fine, it is not necessary that he should be present in court. *Reg. v. Parkinson*, 2 Den. C. C. 459; 15 Jur. 1011.

— Costs.]—The rule as to payment of costs on a motion for a new trial is the same in principle in civil and criminal cases. *Reg. v. Ford*, 1 N. & M. 776.

Where a new trial, on an indictment removed into the Queen's Bench by certiorari at the instance of the defendant, is ordered on the ground of surprise, the court may, in its discretion, order the costs to await the event of the new trial. *Reg. v. Whitehouse*, Dears. C. C. 1.

— Appeal.]—The 17 & 18 Vict. c. 125, s. 35 (C. L. P. Act 1854), which gives an appeal on motions for new trials, does not apply to indictments. *Reg. v. Stephens*, 7 B. & S. 710.

— Jurisdiction of Court of Criminal Appeal.]—It seems that the Court of Criminal Appeal has no power on a mis-trial to set aside the verdict and judgment and to order a venire de novo. *Reg. v. Mellor*, Dears. & B. C. C. 468; 7 Cox, C. C. 454; 27 L. J., M. C. 121; 4 Jur., N. S. 214.

IX. JUDGMENT AND PUNISHMENT.

1. *Generally.*
2. *At Nisi Prius*, 814.
3. *Bringing up for Judgment before Court of Queen's Bench*, 814.
4. *Arrest of Judgment*, 816.
5. *Reversal of Judgment*, 816.
6. *Imprisonment, Time of*, 817.

I. GENERALLY.

Forfeiture.]—33 Vict. c. 23, abolishes the forfeiture of lands and goods for treason and felony, and provides for the administration of the property of convicts.

Record—After New Trial had.]—The record of the proceedings in the Queen's Bench upon an indictment, containing several counts for perjury, after regularly setting forth all the proceedings, down to the finding of a verdict of guilty and the prayer of judgment, went on to state that "because it appears to the court here, that the verdict so given against O. W. K. was unduly given; therefore, the verdict is by the court here vacated and made void; and all other process ceasing against the jury before impanelled, the sheriff is commanded so that he cause a jury anew thereupon to come, &c., by whom the truth of the matter may be better known." And then, after regularly carrying down the further proceedings to the finding of a second verdict of guilty, and a second prayer of judgment, it concluded thus: "It is considered and adjudged and ordered that O. W. K., for the offence charged upon him in and by each and every count of the indictment, be imprisoned in the Queen's prison for the space of eight calendar months:"—Held, that the record in terms contained a sufficient entry of the award of a new trial, it appearing that the form adopted was the same as the precedents used and approved of, and that the entry of the final judgment and sentence was sufficiently certain. *King v. Reg. (in error)*, 18 L. J., Q. B. 253; 13 Jur. 742.—*Ex. Ch.*

The record at the quarter sessions, after stating that the defendants were indicted for stealing oats, to which they pleaded not guilty, and a verdict of guilty thereon, added, "that because it appeared to the justices, that, after the jury had retired, one of them had separated from the other jurors, and conversed respecting his verdict with a stranger, it was considered that the verdict was bad," and it was therefore quashed, and a venire de novo awarded to the next sessions: and it then proceeded to set out the appearance of the parties at such sessions, and the trial and conviction by the second jury, "whereupon all and singular the premises being seen and considered, judgment was given:—Held, on a writ of error, that such judgment was right. *Rea v. Fowler*, 4 B. & A. 273.

Judgment — Postponement of.]—A witness being indicted for perjury is not a reason for postponing judgment against the person convicted. *Rea v. Haydon*, 1 W. Bl. 404; 3 Burr. 1387.

— May be given though Conspirator Untried.]—Indictment against A., B., C. and D. for a conspiracy, charging that they conspired together, with divers other persons unknown. A. and B. were tried. A. was found not guilty, and B. was found guilty of conspiring with C. C. had pleaded before the trial of A. and B., but neither he nor D. appeared to take their trials. On motion to arrest the judgment against B., or suspend it till C. should be tried:—Held, that the verdict was conclusive against B. as a general verdict of guilty, and that judgment might be given against him without reference to what the verdict might be on the trial of C. *Rea v. Cooke*, 7 D. & R. 673; 5 B. & C. 538.

— Punishment to commence in futuro.]—A judgment of imprisonment against a defendant to commence in futuro, i. e. from and after the determination of an imprisonment to which he was before sentenced for another offence, is good in law. *Wilkes v. Rea* (*in error*), 4 Bro. P. C. 367.

— Naming Day for Corporal Punishment.]—It is not the practice of any court of criminal jurisdiction to make the day upon which execution of any corporal punishment is to be done a part of the original sentence. The time of inflicting such punishment is usually left either to the discretion of the officer to whom the execution of the sentence belongs, or is appointed by a particular rule of the court (or statute 27 & 28 Vict. c. 44), which awards the punishment. *Atkinson v. Rea* (*in error*), 3 Bro. P. C. 517.

— Statute need not be Referred to.]—It is not necessary, in recording sentence, to refer to the statute which gives the punishment. *Murray v. Reg.* (*in error*), 7 Q. B. 700; 14 L. J., Q. B. 357; 9 Jur. 596.

— Fine Miscalculated.]—Where a fixed fine by statute for a misdemeanor is miscalculated in the verdict and the judgment, the court, upon a rule served on all parties interested, will alter the rule for judgment against the prisoner, and the entry roll as to so much of the punishment, but they will not alter the judgment and verdict. *Rea v. Stevens*, 3 Smith, 366.

— Pronounced in Prisoner's Absence.]—A sentence of corporal punishment cannot be pronounced on a person in his absence. *Rea v. Harm*, 3 Burr. 1786; *S. P., Anon.*, Lofft, 400.

— Several Counts.]—A general judgment for the crown, on an indictment containing several counts, one of which is bad, and where the punishment is not fixed by law, cannot be supported. *O'Connell v. Reg.* (*in error*), 11 C. & F. 155; 9 Jur. 25.

An indictment contained four counts for extortion, and three counts for uttering forged licences. The jury having returned a verdict of guilty upon all the counts, the court passed sentence of the same identical term of imprisonment upon each count separately. *Reg. v. Carter*, 9 Jur. 178.

The judgment, as entered on the record, being that, for the offences charged in each and every count of the indictment, the defendant be imprisoned in the Queen's prison for six months now next ensuing:—Semble, that the judgment was, in form, a sentence of one term of six months' imprisonment upon the whole indictment, and would, therefore, be erroneous if any count was bad. *Gregory v. Reg.* (*in error*), 15 Q. B. 957; 19 L. J., Q. B. 367; 15 Jur. 79—Ex. Ch.

An indictment at quarter sessions charged prisoners, in a first count, with stealing in the dwelling-house of A. the goods of A. above the value of 5*l.*; in the second count, with simple larceny of moneys and goods (not "other" goods, &c.) of A., describing them precisely as in the first count, and not using the word "afterwards." Not guilty. Jury process to try whether the prisoners are guilty of the felony aforesaid. Verdict that the prisoners are guilty of the felony aforesaid. Judgment, that they respectively be transported for ten years:—Held, that an indictment for felony containing several counts is bad in arrest of judgment, and on error, for duplicity, if it necessarily appears that two or more of the counts are for the same offence; but that this did not necessarily appear on the present indictment. *Campbell v. Reg.* (*in error*), 11 Q. B. 799; 2 New Sess. Cas. 297; 2 Cox, C. C. 463; 15 L. J., M. C. 76; 10 Jur. 329.

Held, secondly, that the word "felony" was not nomen collectivum, meaning felony generally, but pointed to one particular charge of felony. *Id.* See *Ryalls v. Reg.* (*in error*), 11 Q. B. 781.

Held, thirdly, that the verdict was bad for uncertainty, in not specifying the offence of which it found the prisoners guilty. *Id.*

Held, fourthly, that the judgment was erroneous, the court not being at liberty to apply it to the first count only. *Id.*

On error in the Exchequer Chamber:—Held, that whether or not the word "felony" was to be taken as nomen collectivum in the judgment at sessions, it could mean in the jury process one offence only, and therefore the process was here misawarded, and the judgment could not be sustained. *Id.*

An indictment for perjury contained two counts, charging perjury to have been committed by the defendant on two different occasions, one in the progress of a trial, the other in an affidavit in chancery. Both acts of perjury had the same object in view:—Held, that they were distinct offences, and a punishment might

be inflicted in respect of each. *Castro v. Reg.*, 6 App. Cas. 229; 50 L. J., Q. B. 497; 44 L. T. 350; 29 W. R. 669; 45 J. P. 452; 14 Cox, C. C. 546—H. L. (E.)

That the full punishment of seven years' penal servitude might be inflicted for each offence, and that the second term of penal servitude was properly made to begin at the termination of the first term. *Ib.*

If one count in an indictment removed from the quarter sessions to the Queen's Bench by writ of error is good, the court may, under 11 & 12 Vict. c. 78, s. 5, pronounce judgment, or direct the sessions to pronounce it, on the good count. *Holloway v. Reg. (in error)*, 17 Q. B. 319; 2 Den. C. C. 287; 15 Jur. 852.

— **Charge of Joint Felony—Proof of Separate Felonies.**—Two persons charged on indictment with a joint felony, ought not to be sentenced thereon on proof of two distinct felonies. If a verdict of guilty is given against both, judgment may be given against the party who is proved to have committed the first felony in order of time. *Reg. v. Gray*, 2 Den. C. C. 87; T. & M. 411.

— **Withdrawing Pleas.**—On an indictment for libel, the defendant suffered judgment by retraxit. The record of the judgment stated that the prosecutor and the defendant came, &c., and the defendant "withdrew his plea by him pleaded, whereby our lady the Queen remaineth against him without defence in this behalf, whereupon" it was adjudged that he be convicted:—Held, sufficient ground for a judgment, though it was not expressly alleged that the defendant confessed the indictment. *Gregory v. Reg. (in error)*, 15 Q. B. 957; 19 L. J., Q. B. 367; 15 Jur. 79—Ex. Ch.

— **Judgment or Order.**—To the judgment of imprisonment was added, "and that he" (defendant) "be placed in the first division of the fourth class of prisoners in the Queen's prison:—Semble, that, if this direction was not warranted by an order of the secretary of state, under 5 & 6 Vict. c. 22, it did not vitiate the judgment. *Ib.*

Held, by the Queen's Bench, that such direction, when warranted, is no part of the judgment of the court, but a mere order. *Ib.*

— **Case standing over pending Application to Amend.**—On an objection to the entry of a judgment, on the ground that it was a general judgment upon all the counts, and one of them was bad, the court ordered the case to stand over to allow the prosecutor to apply to the court below to amend. *Ib.*

Penal Servitude.—20 & 21 Vict. c. 3, amends the 16 & 17 Vict. c. 99, and abolishing transportation, substitutes penal punishment.

27 & 28 Vict. c. 47, amends the Penal Servitude Acts, 16 & 17 Vict. c. 99, and 20 & 21 Vict. c. 3.

The Prevention of Crimes Act, 1871, amended by 42 & 43 Vict. c. 55, amends the Penal Servitude Acts.

42 & 43 Vict. c. 55, reduces the minimum terms of penal servitude in case of previous convictions to five years.

Transportation—What is.—By the word transportation in 8 Geo. 3, c. 15, was meant not merely the conveying of the felon to the place of transportation, but his being so conveyed and remaining there during the term for which he was ordered to be transported; and, therefore, a felon attainted was not by that statute restored to his civil rights till after the expiration of the term for which he was ordered to be so transported. *Bullock v. Dodds*, 2 B. & A. 258.

— **Judgment or Order.**—Where a prisoner was convicted of perjury at the assizes at Chester, and the sentence of transportation was entered on the record as follows:—"Wherefore, all and singular the premises being seen by the justices here, and fully understood, it is therefore ordered that he the said L. K. be transported to the coast of New South Wales, or some one or other of the islands adjacent, for and during the term of seven years:—Held, on error, that this was no judgment, but merely an order. *Re v. Kenworthy*, 3 D. & R. 173; 1 B. & C. 711.

A judgment entered upon the record, that J. M. "be transported beyond the seas for the term of ten years, from the 8th day of August instant," without specifying some place of transportation, "not in Europe," is correct and valid, notwithstanding. *Martin v. Reg.*, 3 Cox. C. C. 319.

Punishment before Penal Servitude need not be given.—The 2 Geo. 2, c. 25, s. 2, authorizes the judge before whom a person shall be convicted of perjury, to order such person to be sent to a house of correction for seven years, there to be kept to hard labour; "and thereupon judgment shall be given that the person convicted shall be committed accordingly, over and besides such punishment as shall be adjudged to be inflicted upon such person, agreeable to the laws now in being:—Held, that this statute did not impose on the court the necessity of awarding any punishment previous to that of penal servitude, so as to give the sentence of penal servitude the form of an additional punishment. *Castro v. Reg.*, 6 App. Cas. 229; 50 L. J., Q. B. 497; 44 L. T. 350; 29 W. R. 669; 45 J. P. 452; 14 Cox, C. C. 546—H. L. (E.)

Sentence Presumed to be Passed by Court of Competent Jurisdiction.—A return to a habeas corpus to bring up two prisoners detained in Millbank prison, set out an act of the Royal Court of Jersey, whereby they were convicted of burglary by that court (which was alleged to be a competent court to try and punish that crime), and sentenced to be transported to such place as her Majesty in council should order. It also set out an order in council directing the place of their transportation, and a warrant of the secretary of state for their removal to Millbank prison, in order to carry the sentence into effect, and as authority to the keeper of that prison to receive them:—Held, that the court was bound to presume that the sentence being passed by a court of competent jurisdiction, and unreversed, was warranted by law and valid. *Reg. v. Brennan*, 10 Q. B. 492; 16 L. J., Q. B. 289; 11 Jur. 775.

Length of Sentence—Effect of Excess.—A judgment of transportation for fourteen years, if bad for excess, is bad in toto, and cannot

operate as a good judgment of transportation for seven years. *Reg. v. Ellis*, 8 D. & R. 173.

Where a court of quarter sessions passed an erroneous judgment of transportation, the court would not send it back to be amended, but would reverse it on writ of error, before 11 & 12 Vict. c. 78, s. 5. *Ib.*

— **Amendment of Sentence.**—The prisoner was convicted on an indictment for obtaining goods by false pretences, and also pleaded guilty to a previous conviction for false pretences charged in the indictment. He was sentenced to seven years' penal servitude:—Held, that the sentence was wrong, and it was amended by reducing it to five years' penal servitude. *Reg. v. Horn*, 15 Cox, C. C. 205; 48 L. T. 272; 47 J. P. 344.

— **Previous Conviction.**—A prisoner had been convicted on an indictment charging a previous conviction and subsequent felony under 24 & 25 Vict. c. 96, s. 116, and sentenced by mistake to five years' penal servitude, seven years being the minimum under the statute. Upon a writ of error, by the crown, for the purpose of reversing the judgment and passing the proper sentence, it appeared from the record that the provisions of the statute, as to arraigning the prisoner, had been neglected:—Held, that these provisions were material, and the conviction was quashed. *Reg. v. Fox*, 10 Cox, C. C. 502; 15 W. R. 106.

A. was convicted of the misdemeanor of having done grievous bodily harm to B. The indictment did not charge a previous conviction of felony; but after the jury had found him guilty, it was proved on oath that he had been previously convicted of felony, but no record or certificate of such conviction was produced. He was sentenced to penal servitude for five years, as for a misdemeanor only without any previous conviction of felony:—Held, that the sentence was correct under 27 & 28 Vict. c. 47, s. 2. *Reg. v. Summers*, 1 L. R., C. C. 182; 38 L. J., M. C. 62; 17 W. R. 384; 11 Cox, C. C. 248. See *Reg. v. Garland*, 11 Cox, C. C. 224.

Length of Sentence in Particular Cases.—Under 7 Will. 4 & 1 Vict. c. 90, s. 1, by which any person convicted of the offence of breaking and entering a dwelling-house, and stealing therein, shall be liable to be transported beyond the seas for any term not exceeding fifteen years, nor less than ten years, there was no power to pass sentence of transportation for less than ten years. *Whitehead v. Reg. (in error)*, 7 Q. B. 582; 14 L. J., M. C. 165; 9 Jur. 594.

A person convicted of obtaining money by false pretences, after a previous conviction for felony (the previous conviction being charged in the indictment), cannot be sentenced to penal servitude for a less term than seven years. *Reg. v. Deane*, 2 Q. B. D. 305; 46 L. J., M. C. 155; 36 L. T. 31; 13 Cox, C. C. 386. See now, however, 42 & 43 Vict. c. 55, which repeals s. 2 of the Penal Servitude Act, 1864.

To render a sentence of penal servitude for seven years obligatory under the Penal Servitude Act, 1864, which enacts in s. 2 (repealed), that "where any person shall, on indictment, be convicted of any crime or offence punishable with penal servitude, after having been previously convicted of felony, the least sentence of penal servitude that can be awarded in such case shall be a period of seven years;" the indictment

must charge the previous conviction. *Reg. v. Willis*, 1 L. R., C. C. 363; 41 L. J., M. C. 102; 26 L. T. 485; 12 Cox, C. C. 192.

Therefore, when a man was convicted of unlawfully wounding on an indictment which charged a wounding with intent to do grievous bodily harm, and did not mention a previous conviction for felony, but such a previous conviction was proved against him:—Held, that the judge was not bound to pass a sentence of penal servitude for seven years, and that a sentence of penal servitude for five years was right. *Ib.*

An indictment contained three counts; first, a count stating a previous conviction, and a subsequent larceny; secondly, a count for larceny; thirdly, a count for receiving stolen goods. When the prisoner was arraigned, so much only of the first count as charged the subsequent felony was read to him, and he pleaded guilty thereto. He also pleaded guilty to the second count. Then so much of the first count was read as stated the previous conviction, and the prisoner pleaded guilty thereto. He was then sentenced to five years' penal servitude on the second count; a nolle prosequi was entered on the third, and nothing was done on the first. These facts appeared on the record. The crown having brought the record upon writ of error for the purpose of having the sentence increased to seven years' penal servitude, under 27 & 28 Vict. c. 47, s. 2:—Held, that the first count was bad, and no sentence could be entered upon it; that, the second count being good, the sentence properly entered upon it was not affected by the first count; and, the crown entering a nolle prosequi on the first count, the judgment and sentence were affirmed; but the court recommended that, under the circumstances, the executive should discharge the prisoner after two years' imprisonment. *Reg. v. O'Brien*, 1 L. R., C. L. 166.

Returning from Transportation.—The king's sign manual may be given in evidence by the prisoner, on an indictment for returning from transportation; and if not revoked, and the condition is literally, though not substantially complied with, it will discharge the prisoner from that indictment. *Reg. v. Miller*, 2 W. Bl. 797; 1 Leach, C. C. 74.

— **Indictment.**—An indictment for being at large after an order of transportation, stated that the prisoner was capitally convicted at the assizes of 1818; and that mercy was extended to him on condition of his being transported for life to some parts beyond the seas; and that he was thereupon ordered to be transported to New South Wales, or to some of the islands adjacent; and it appeared that the condition on which mercy was granted was not general, but specific, that he should be transported to New South Wales, or some of the islands adjacent:—Held, a fatal variance. *Reg. v. Fitzpatrick*, L. R. & R. C. 512.

An indictment on 56 Geo. 3, c. 27, s. 8, for being at large after sentence of transportation, should set forth the effect and substance of the former conviction; so likewise should the certificate of the former conviction. *Reg. v. Watson*, R. & R. C. 468; *S. P.*, *Reg. v. Sutcliffe*, R. & R. C. 469, n.

In an indictment under 5 Geo. 4, c. 84, s. 22,

it is necessary to aver that the prisoner was feloniously at large before the expiration of his sentence, and an indictment omitting the word "feloniously" is bad. *Reg. v. Horne*, 4 Cox, C. C. 263.

— **Original Sentence Revives.**—A prisoner convicted of a capital crime, whose sentence is respited during the king's pleasure, and who, on having received pardon on condition of transportation for life, is afterwards found at large in Great Britain, without lawful cause, will be referred back to his original sentence. *Re v. Madan*, 1 Leach, C. C. 223.

— **Payment of Reward.**—The judge, before whom a prisoner is tried for returning from transportation, has power to order the county treasurer to pay the prosecutor the reward under 5 Geo. 4, c. 84, s. 22. *Reg. v. Emmons*, 2 M. & Rob. 279. *S. P.*, *Reg. v. Ambury*, 6 Cox, C. C. 79.

— **Proof of Conviction and Sentence.**—On the trial of an indictment against a person for being at large without lawful cause before the expiration of his term of transportation, a certificate of his former conviction and sentence was put in: it purported to be that of J. G., deputy clerk of the peace for the county of L., and clerk of the courts of general quarter sessions of the peace holden in and for the said county, and having the custody of the records of the courts of general quarter sessions of the peace holden in and for the said county. It was proved that Mr. H. was clerk of the peace of L., and that he had three deputies, partners, of whom J. G., who had signed the certificate, was one; and that each of them acted as clerk of the peace; and that for forty years they had kept the sessions records at their office:—Held, sufficient proof of the conviction and sentence under 5 Geo. 4, c. 84, s. 24. *Reg. v. Jones*, 2 C. & K. 524.

Where a prisoner was indicted under 5 Geo. 4, c. 84, s. 22, for being found at large in England before the expiration of a term for which he had been sentenced to be transported:—Held, that the fact of such sentence being in force at the time he was so found at large, was sufficiently proved by the certificate of his conviction and sentence, the judgment remaining unreversed; although, on the face of such certificate, it appeared that the sentence was one which could not have been inflicted on him for the offence of which, according to such certificate, he had been committed. *Reg. v. Finney*, 2 C. & K. 774.

A certificate of previous conviction for felony, prepared under 7 & 8 Geo. 4, c. 28, s. 11, is good evidence of his conviction and sentence, on an indictment for returning from transportation before the expiration of a sentence under 5 Geo. 4, c. 84. *Reg. v. Ambury*, 6 Cox, C. C. 79.

— **Punishment.**—Under 9 Vict. c. 24, s. 1, the judge had the power of reducing the punishment of transportation for life under 4 & 5 Will. 4, c. 67, for the offence of being at large before the expiration of the term for which the prisoner had been ordered to be transported, and might under the latter statute sentence the prisoner to be transported for any term less than seven

years after the imprisonment directed by the earlier statute. *Reg. v. Lamb*, 3 C. & K. 96.

2. AT NISI PRIUS.

Application to amend Judgment.—By 11 Geo. 4 & 1 Will. 4, c. 70, s. 9, upon trials for felony or misdemeanor on a K. B. record, judgment may be pronounced at the assizes, and shall have the effect of a judgment in the court above, unless the court in the first six days of term grant a rule nisi for a new trial or for amending the judgment. A defendant on such record having been sentenced at the assizes, cannot apply to the court to amend the judgment by diminishing the punishment upon ordinary affidavits in mitigation, or without shewing some specific defect in the sentence, or some matter which could not have been adduced at the assizes. *Re v. Lloyd*, 4 B. & Ad. 135.

Where judgment on a record of the Queen's Bench is pronounced at the assizes under 11 Geo. 4 & 1 Will. 4, c. 70, s. 9, the court may, if they see fit, amend the judgment by ordering it to be arrested. *Reg. v. Nott*, 4 Q. B. 768; D. & M. 1; 12 L. J., M. C. 143; 7 Jur. 621.

Where a verdict has been given for the crown in such trial, and the defendant desires to have judgment pronounced at the assizes, it is the proper course for his counsel to state at the same time, that he intends to avail himself of the provision of s. 9, by moving the court for a new trial on the ground of misdirection, or in arrest of judgment. *Id.*

Upon the trial of an indictment at nisi prius, judgment was pronounced by the judge, under 11 Geo. 4 & 1 Will. 4, c. 70, s. 9; but a rule nisi, to arrest the judgment, was afterwards granted by the court of Queen's Bench, within the first six days of term, and subsequently discharged. Upon writ of error brought, the record was made up without any notice of such rule:—Held, that the judgment could not be impeached upon the ground of such rule having been granted. *Dunn v. Reg. (in error)*, 12 Q. B. 1026; 3 Cox, C. C. 205; 18 L. J., M. C. 41; 13 Jur. 233—Ex. Ch.

Sentence—Commencement of.—A sentence of imprisonment passed at nisi prius, the defendant not being present, may declare that the imprisonment shall commence on the day on which he shall be taken to and confined in prison. *King v. Reg. (in error)*, 7 Q. B. 782; 14 L. J., M. C. 172; 9 Jur. 833—Ex. Ch.

New Trial—Second Trial at Sessions.—An indictment for felony had been removed from the quarter sessions, and tried at nisi prius. The prisoners were convicted, and the court of Queen's Bench ordered a new trial. Neither side brought down the record, but the prisoners applied to be tried there; this could not be done, as the record had not been brought down. A procedendo issued, and the prisoners were tried at the quarter sessions and convicted. *Reg. v. Seaife*, 3 C. & K. 211.

3. BRINGING UP FOR JUDGMENT BEFORE COURT OF QUEEN'S BENCH.

Sentence passing in Absence or Presence of Defendant.—The court cannot compel a prosecutor to be at the expense of bringing a defendant

in custody up to receive judgment for a misdemeanor; but if the defendant is too poor to come up at his own expense, they will pass judgment in his absence. *Reg. v. Boltz*, 8 D. & R. 65; 5 B. & C. 334.

Where a defendant, convicted upon an indictment for a libel, was committed to prison at the instance of the prosecutor, who would not afterwards bring him up for judgment, the court, at the prayer of the defendant, passed judgment in his absence. *Ib.*

An indictment for perjury was removed by the defendant under 16 & 17 Vict. c. 30, ss. 4, 5. At the trial the defendant was convicted, but sentence was not passed upon her. Due notice was served upon her and her bail that she was to receive judgment on a particular day. She did not appear. The court refused to pronounce judgment in the absence of the defendant, but ordered the recognizances to be estreated. *Reg. v. Williams*, 18 W. R. 806.

But where a defendant had been convicted for a conspiracy to bribe, the attorney-general prayed judgment in the absence of the defendant, who produced affidavits shewing that he was too ill to attend:—Held, that the court had a discretionary power whether or not judgment should be pronounced in the absence of a defendant. Had the sentence been that of imprisonment his attendance might have been insisted on; but as a fine was considered sufficient, sentence was passed in his absence. *Reg. v. Kinglake*, 18 W. R. 806.

A justice convicted of a misdemeanor in his office must attend in person to receive the judgment of the court; but upon an affidavit of age and infirmity the court will dispense with his personal attendance. *Reg. v. Constable*, 7 D. & R. 663; 3 B. & Ad. 639, n.

Entering into Recognizances — Proof that Defendant has since Offended.—Where, upon a trial of an indictment for libel, one of the defendants pleaded guilty, and entered into recognizances to appear and receive judgment, with a condition that if he ceased to publish libels he would not be called up; the court would not pass judgment unless the prosecutor produced an affidavit that he had published a libel since the trial. *Reg. v. Richardson*, 8 D. P. C. 511; 4 Jur. 104.

Practice—In what order Proceedings heard.]—When a defendant is brought up for judgment, after verdict, the defendant's affidavits will be first read, and then those for the prosecution; after which the defendant's counsel will be heard, and lastly, the counsel for the prosecution. *Reg. v. Buntz*, 2 T. R. 683.

But where a defendant is brought up for sentence, after judgment by default, the prosecutor's affidavits will be first read, then the defendant's; after which the counsel for the prosecution will be heard, and lastly, the counsel for the defendant. *Ib.*

Where several defendants are brought up for sentence, some after judgment by default and others after verdict, the counsel for all must first be heard in mitigation, and then the counsel for the crown in aggravation. *Reg. v. Despard*, 2 M. & S. 406.

Where a defendant, having pleaded guilty to an indictment, is brought up for judgment, the counsel for the crown is to be heard before the

counsel for the defendant; and the affidavits in aggravation are to be read before the affidavits in mitigation. *Reg. v. Dignam*, 7 A. & E. 593.

Contra, where a verdict of guilty has been taken, though by consent, and without evidence. *Ib.*

Semble, that the rule is not to be varied where several defendants are jointly indicted, and some suffer judgment by default and others are convicted on verdict; and in such case, where there was no affidavit in aggravation, but affidavits were offered in mitigation, the court heard the counsel for the defendants first. *Ib.* See *Reg. v. Sutton*, 7 A. & E. 592, n.

Acts subsequent to Trial may be Considered.]

—When a defendant is brought up for judgment his acts subsequent to the trial may be considered either by way of aggravating or mitigating the punishment, even though they are separate and distinct offences, for which he may afterwards be punished. But in such cases the court will take care not to inflict a greater punishment than the principal charge itself will warrant. *Reg. v. Withers*, 3 T. R. 428.

Affidavits in Aggravation.]—Affidavits are not admissible in aggravation in a case of felony, although the record has been removed by certiorari. *Reg. v. Ellis*, 9 D. & R. 174; 6 B. & C. 145.

Where Prosecutor has brought Action for same Offence.]—A defendant being brought up for judgment for an assault, and it appearing that the prosecutor had commenced an action, which was still depending for the same assault; the court refused to pass any judgment, except that the defendant should give security for his good behaviour, he having used violent language towards the prosecutor in addressing the court; and this, although, at the time of the defendant being brought up, the prosecutor offered to discontinue the action. *Reg. v. O'Gorman Mahon*, 4 A. & E. 575.

4. ARREST OF JUDGMENT.

Presence in Court.]—If a defendant would move in arrest of judgment after conviction for a misdemeanor, he must be present in court. *Reg. v. Spragg*, 2 Burr. 928.

5. REVERSAL OF JUDGMENT.

Statute.]—By 11 & 12 Vict. c. 78, s. 5, *whenever any writ of error shall be brought on any judgment in any indictment, information, presentment or inquisition in any criminal case, and the court of error shall reverse the judgment, it shall be competent for such court of error either to pronounce the proper judgment or to remit the record to the court below, in order that such court may pronounce the proper judgment upon such indictment, information, presentment or inquisition.*

Discharge of Prisoner.]—Where a person has been erroneously sentenced at quarter sessions to imprisonment and hard labour, the court, after reversing the judgment in error, has no alternative but to discharge the prisoner. *Silversides v. Reg.*, 2 G. & D. 617; 3 Q. B. 406; 6 Jur. 805.

Upon a reversal of the judgment, the court has no power to order that the plaintiff in error

should be discharged. *King v. Reg. (in error)*, 7 Q. B. 782; 14 L. J., M. C. 172; 9 Jur. 833—Ex. Ch.

Where a judgment of imprisonment was reversed upon error, the court granted a rule, directing that the plaintiff in error should be discharged out of the custody of the keeper of the Queen's prison, where he had been kept by virtue of his commitment. *Holt v. Reg. (in error)*, 2 D. & L. 774; 14 L. J., Q. B. 98; 9 Jur. 538.

Execution Stayed pending Writ of Error.]—By 8 & 9 Vict. c. 68, s. 1, *execution of judgment upon prosecutions for misdemeanors, while a writ of error is pending to reverse the judgment, may be stayed upon giving bail.*

6. IMPRISONMENT, TIME OF.

How Computed.]—Where a term of one calendar month's imprisonment begins in one month and ends in another, the month must be calculated from the day on which the imprisonment commences to the day before the (numerically) corresponding day in the following month. If there be no such numerically corresponding day, the term will end on the last day of the following month. *Migotti v. Colville*, 4 C. P. D. 233; 48 L. J., C. P. 695; 40 L. T. 747; 27 W. R. 744; 14 Cox, C. C. 305—C. A.

X. ERROR AND APPEAL.

1. *Writ of Error.*
2. *Appeal*, 822.
3. *Court of Crown Cases Reserved*, 823.

1. WRIT OF ERROR.

Jurisdiction to Review the Granting of.]—The granting of a writ of error is part of the prerogative of the crown. If, therefore, the attorney-general of England or the lord-lieutenant of Ireland refuses to grant it, the lord-chancellor has no jurisdiction to review that decision. *Piggott, In re*, 19 L. T. 114; 11 Cox, C. C. 311.

After Judgment—Only Means of Removing Record.]—After judgment the record can only be removed by a writ of error. *Rea v. Seton*, 7 T. R. 373; *S. P.*, *Rea v. W. R. Yorkshire (Justices)*, 7 T. R. 467.

On what Grounds.]—A return to a writ of error, directed to the commissioners of oyer and terminer of the city of London, set out the record of an indictment found against the defendant before the lord mayor and others, and stated that he was tried upon the indictment by a jury of the country at the next session holden before the lord mayor and several of the judges, aldermen, recorder and others, assigned by certain letters patent under the great seal directed to them, or any two or more of them, to inquire of certain offences; and that he was, by the verdict of such jury, found guilty, and that thereunto judgment was given by the court against him. Upon this return the defendant assigned, as errors in law, that the judgment was insufficient, and should have been for the defendant; and, as errors in fact, first, that when the jury gave their verdict there was but one of the justices named in the commission present in court; and, secondly, that the verdict was not at the time it was so given

entered of record. The king's coroner and attorney answered, in nullo est erratum, and prayed that the judgment might be affirmed:—Held, as to the first error in fact, that, as it appeared by the record that the verdict was given at a session holden before several of the commissioners and justices, the plaintiff in error could not be allowed to aver, in contradiction of the record, that only one of the justices was present when the jury gave their verdict, and the answer in nullo est erratum is no admission of the fact assigned for error, unless it could lawfully be assigned, and is well assigned in point of form:—Held, also, that the second error in fact assigned was no error, inasmuch as it was impossible that a verdict should be recorded at the time when it was given, the recording of it being necessarily an act subsequent to the delivery of the verdict by a jury. *Rea v. Carlile*, 2 B. & Ad. 362; 4 C. & P. 415.

Error was brought upon a judgment at the Old Bailey, and one ground assigned was that a material fact stated on the record was not true. The court held such an averment inadmissible, and affirmed the judgment. The fact being as alleged by the defendant below, the court of oyer and terminer afterwards ordered the record to be amended, and their clerk, by a rule of the court of K. B., came into the latter court and made the amendment there. Upon motion afterwards that the case might be again set down for argument:—Held, that the court of K. B. could not re-hear it, after the expiration of the term in which judgment was given, though the attorney-general consented, and that the only remedy was by writ of error to the House of Lords. *Rea v. Carlile*, 2 B. & Ad. 971.

Where the court appears by the indictment to have had jurisdiction over the offence, it cannot be assigned as ground of error that the offence was committed out of the jurisdiction of the court. *Reg. v. Newton*, 4 El. & Bl. 869; 24 L. J., Q. B. 246; 1 Jur., N. S. 591; *S. P.* and *S. C.*, 16 C. B. 97.

When an indictment contains several counts, it is not ground of error that no verdict has been given on some of them, provided a verdict has been found on one good count, and judgment given accordingly. *Latham v. Reg. (in error)*, 5 B. & S. 635.

A writ of error was sued out by a person convicted of a misdemeanor in the Queen's Bench, and judgment of reversal for non-joinder in error was entered up in the Exchequer Chamber. Subsequently the Queen's Bench, by rule, quashed the writ as having been improperly issued for the purpose of effecting a compromise. The writ, assignment of errors, and judgment of reversal remained upon the judgment roll and transcript, and below them an entry was made of the rule of the court, quashing the writ of error. The prisoner sued out a fresh writ of error, and assigned errors both in the indictment and in the rule of the Queen's Bench. The prosecutor obtained a rule nisi in the Exchequer Chamber to expunge the entry of the judgment:—Held, that the court of Queen's Bench having, in the exercise of its equitable jurisdiction, quashed the first writ of error for matter dehors the record, the writ and the judgment under it were both void and gone, and ought not to remain on the record; that the rule of the Queen's Bench being for matter dehors the writ was not examinable in error, and ought not to

appear on the record, and that the rule to expunge the judgment might be made absolute in its terms, as the writ of error, on which it was founded, was absolutely avoided; aliter if the writ of error had been merely voidable, in which case the rule would have been misconceived as not embracing it. *Alleyne v. Reg. (in error)*, 5 El. & Bl. 392; *Dears. C. C. 505*; 24 L. J., Q. B. 282; 1 Jur., N. S. 869—Ex. Ch.

Previous Fiat of Attorney-General.—It is in the discretion of the attorney-general to grant his fiat for a writ of error for a misdemeanor, and therefore, if he has exercised his discretion by refusing to grant his fiat, the court will not order him to grant it. *Reg. v. Newton*, 4 El. & Bl. 869; 24 L. J., Q. B. 246; 1 Jur., N. S. 591; *S. P.* and *S. C.*, nom. *Newton*, *In re*, 16 C. B. 97.

Where, in a colony, a person has been convicted of a criminal offence, and is in execution of a sentence passed for that offence, no writ of error will be granted to bring up the record of conviction, unless the attorney-general has first issued his fiat for a writ of error. Nor will a certiorari be granted in general to remove a record under such circumstances in order that a writ of error may afterwards be brought. Nor will a habeas corpus be granted under such circumstances to bring up the prisoner. *Reg. v. Lees*, El., Bl. & El. 828; 27 L. J., Q. B. 403.

Misdemeanors.—16 & 17 Vict. c. 32, imposes terms and conditions for bringing writs of error upon judgments for misdemeanors.

Practice on—Presence in Court of Plaintiff in Error.—The court dispensed with the attendance of a plaintiff in error, to craveoyer of the record of an indictment for bigamy, for the purpose of assigning errors, where it appeared that he was resident in Australia, where he had been for the last thirty years; that he was sixty-six years of age, and subject to paralytic attacks, and that he could not make the journey to this country without injury to his health, and without considerable pecuniary loss. *Murray v. Reg. (in error)*, 3 D. & L. 100; 7 Q. B. 700; 14 L. J., Q. B. 357; 9 Jur. 410.

Upon a motion by a plaintiff in error under 16 & 17 Vict. c. 32, s. 3, for reversal of judgment upon an indictment for a misdemeanor, he must be personally present in court. *Howard v. Reg. (in error)*, 10 Cox, C. C. 54; 11 L. T. 629; 13 W. R. 316.

Service of Rule nisi.—The rule is nisi only, and should be served on the officer of the court from which error is brought, and not on the prosecutor or his attorney. *Id.*

Where the prosecutor and his attorney were both dead, the court directed service of the rule to join in error to be made by sticking it up in the crown-office, and serving a copy on the solicitor to the Treasury. *Murray v. Reg.*, 3 D. & L. 100; 7 Q. B. 700; 14 L. J., Q. B. 357; 9 Jur. 410.

In Formâ Pauperis.—Quære, whether a writ of error in felony can be sued out in formâ pauperis. *Reg. v. Stokes*, 3 C. & K. 189.

Form of Præcipe and Petition.—Form of the præcipe and petition with the secretary of

state's fiat necessary when a writ of error in a criminal case to the House of Lords is sued out. *Reg. v. Lavey*, 2 Den. C. C. 512, n.

Who may bring Error.—One of two persons convicted of conspiracy may bring error on the judgment of conviction without the other. *Wright v. Reg. (in error)*, 14 Q. B. 148; 16 L. J., Q. B. 10; 11 Jur. 103.

Assigning Errors.—Upon a motion to quash a writ of error, under s. 5 of 8 & 9 Vict. c. 68, it is not necessary that the defendants should have been previously ruled to assign errors. *Reg. v. Broome*, 2 B. C. Rep. 259; 5 D. & L. 607; 17 L. J., Q. B. 208; 12 Jur. 838.

Where a writ of error issued on the application of a defendant to bring up a transcript of the record and proceedings on an indictment for perjury, with all things touching the same, and the writ was returned, and the plaintiff in error assigned errors, he could not afterwards object that the proceedings on a rule to arrest judgment, which had been discussed in the court below, were not mentioned in the return. *Reg. v. Dunn (in error)*, 12 Q. B. 1026; 18 L. J., M. C. 41—Ex. Ch.

Where judgment of non pros. has been signed by the defendant in error, in an indictment for a misdemeanor, because the plaintiff in error has not assigned errors in proper time, the defendant in error has a right to enter the proceedings and judgment of non pros. upon the judgment roll in the court below. *Reg. v. King*, 14 L. J., Q. B. 86; 9 Jur. 551.

Joinder in Error.—When error is brought on a judgment for felony, and the crown does not join in error, the defendant will be discharged. *Rea v. Howes*, 7 A. & E. 60, n.; 3 N. & M. 462.

So in error upon a conviction for a misdemeanor. *Id.*

Where error is brought by a person convicted of felony, from the Queen's Bench to the Exchequer Chamber, the general rules for governing the proceedings in error, in civil cases, do not apply; but the prisoner must be brought up to the court, to prayoyer of the record, and to assign errors by delivering them in writing to the officer of the court, and must be present during the argument and the giving judgment. The counsel representing the attorney-general for the crown may, if he pleases, orally join in error, immediately on the assignment of errors being delivered in. *Mansell v. Reg. (in error)*, 8 El. & Bl. 54; *Dears. & B. C. C. 375*; 27 L. L., M. C. 4; 4 Jur., N. S. 432—Ex. Ch.

Setting aside when Sued to enable Person to Compromise.—Where a writ of error is sued out upon a judgment of the Queen's Bench in a criminal prosecution, for the purpose of enabling the parties to effect a compromise of such prosecution, that court has the power, under the 12 & 13 Vict. c. 109, s. 39, to set aside such writ of error, and will exercise that power. *Reg. v. Alleyne*, *Dears. C. C. 505*; 4 El. & Bl. 186; 1 Jur., N. S. 372.

After the writ of error has been so set aside by the Queen's Bench, the Court of Exchequer Chamber will set aside a judgment, signed thereon by order of a judge, for want of a joinder in error. *Alleyne v. Reg. (in error)*,
2 B 2

Dears. C. C. 505 ; 24 L. J., Q. B. 282 ; 1 Jur., N. S. 869—Ex. Ch.

— **Powers of Court upon.]**—Writ of error to reverse a judgment of outlawry of the plaintiff for not appearing to receive judgment upon an indictment on which he had been convicted by his own confession, and which had been removed into the Queen's Bench by certiorari. Errors were assigned in the process of outlawry, and that the outlawry was founded on the judgment of conviction of the matters in the indictment, whereas certain of the counts were bad. Joinder in error, that neither in the outlawry nor in the pronouncing of the judgment of conviction is there error. Upon application on behalf of the prosecutor, that the outlawry, which was admitted to be bad, should be reversed, and that the plaintiff in error should be brought up for judgment:—Held, that the court could only reverse the outlawry, and could not entertain the question of error in the record of conviction. *Wright v. Reg. (in error)*, 14 Q. B. 148 ; 16 L. J., Q. B. 10 ; 11 Jur. 103.

Upon a writ of error on an indictment for felony, the judgment must be reversed, if an erroneous punishment is awarded. *Bourn v. Rex (in error)*, 2 N. & P. 248 ; 7 A. & E. 58 ; 1 Jur. 542.

— **Sealing Writ of Error.]**—It is the duty of the clerk of the petty bag office in the Court of Chancery not to seal a writ of error in cases of misdemeanor until the attorney-general has issued his fiat. *Castro v. Murray*, 10 L. R., Ex. 213 ; 44 L. J., M. C. 70 ; 32 L. T. 675 ; 23 W. R. 596.

A person having been convicted of a misdemeanor, prepared a writ of error, and requested the clerk of the petty bag office to seal it in pursuance of 12 & 13 Vict. c. 109, s. 38. The clerk having refused on the ground that the attorney-general had not issued his fiat, the plaintiff brought an action against the clerk, claiming damages for the refusal, and a mandamus to compel the clerk to seal the writ:—Held, that the action must be stayed, as being frivolous and vexatious, and an abuse of the process of the court. *Id.*

— **Re-committal—Contents of.]**—A prisoner in custody, under a sentence of imprisonment for two years on a conviction for a misdemeanor, was discharged on bringing a writ of error and entering into a recognizance to prosecute the writ with effect. No notice was given to the prosecutor, nor was the recognizance duly filed in the crown office. He was therefore ordered to be recommitted. The judge's warrant, under which he was retaken, directed his apprehension and recommitment, stating it to be "in execution of the judgment in the prosecution:—Held, that the warrant was good, and that it was not necessary to state on the face of it how long the renewed imprisonment was to continue. *Dugdale v. Reg. (in error)*, 3 C. L. R. 74 ; 24 L. J., M. C. 55.

— **Recognizance—Form of.]**—A defendant, being convicted and sentenced to imprisonment, at the sessions, for misdemeanor, brought error in the Queen's Bench, and afterwards in the Exchequer Chamber. In the latter court he entered into a recognizance, conditioned, in case of the affirmation of the judgment, to surrender himself per-

sonally, to be dealt with "as our Court of Exchequer Chamber may order." This recognizance was filed in the Queen's Bench. The defendant was discharged out of custody by a judge at chambers. On motion in the Queen's Bench to apprehend and recommit him:—Held, that the recognizance was before the court, although not appearing in the affidavits ; and that the recognizance was not in conformity with 8 & 9 Vict. c. 68, s. 1, and that the rule must be made absolute. *Dugdale v. Reg. (in error)*, Dears. C. C. 254 ; 2 El. & Bl. 129 ; 17 Jur. 1097.

— **Paper Books.]**—A defendant in error not having delivered paper books to two of the judges, in pursuance of rule 23 of the regulations in the crown-office, and which rule concludes by saying that "judgment shall be given by the court against the party neglecting to deliver paper books to the judges, if the court shall so please;" the court nevertheless directed the argument to proceed. *Still v. Reg. (in error)*, 17 Jur. 208, n. ; S. P., 16 L. T. 494.

2. APPEAL.

Felony.]—It is contrary to the policy of the English law that there should be an appeal in cases of felony. *Eduljee Byramjee, Ex parte*, 5 Moore, P. C. 276 ; 11 Jur. 855.

Before Judicature Act.]—The 17 & 18 Vict. c. 125, s. 35 (C. L. P. Act), 1854, which gives an appeal on motions for new trials, does not apply to indictments. *Reg. v. Stephens*, 7 B. & S. 710.

Since Judicature Act—Criminal Cause or Matter—What is.]—Under the Judicature Acts, 1873 and 1875, there is no appeal to the Court of Appeal in a criminal case except for error on the record. *Reg. v. Steel*, 2 Q. B. D. 37 ; 46 L. J., M. C. 1 ; 35 L. T. 534 ; 25 W. R. 34 ; 13 Cox, C. C. 354—C. A.

By 6 & 7 Vict. c. 96, s. 8, on judgment for the defendant in an information for libel, he is entitled to recover from the prosecutor his costs, to be taxed by the officer of the court before which the information is tried. The master of the crown office having taxed the defendant his costs according to the usual practice under a side-bar rule, the defendant appealed to the Queen's Bench Division against the taxation, and that division affirmed the taxation. On appeal to the Court of Appeal:—Held, that by the latter part of s. 47 of 36 & 37 Vict. c. 66, the general right of appeal given by s. 19 from any judgment of the High Court is excepted in any criminal cause or matter ; that the costs were the consequence of the judgment, and were within the exception ; and that the Court of Appeal had no jurisdiction. *Id.*

A judgment of the Court of Appeal from an inferior court, against the validity of a conviction, under 16 & 17 Vict. c. 119, s. 3, for keeping a common gaming-house, on a case stated under 20 & 21 Vict. c. 43, is a judgment of the High Court in a criminal matter from which, by s. 47 of the Judicature Act, 1873, there is no appeal. *Blake v. Beech*, 2 Ex. D. 335 ; 36 L. T. 723—C. A.

Where the Queen's Bench Division has discharged a rule for a certiorari to bring up a conviction by justices to be quashed for want of

jurisdiction, that is a judgment in a criminal cause or matter within s. 47 of the Judicature Act, 1873, from which no appeal lies. *Reg. v. Fletcher*, 2 Q. B. D. 43; 46 L. J., M. C. 4; 35 L. T. 538; 25 W. R. 149; 13 Cox, C. C. 358—C. A.

The Court of Appeal has no jurisdiction to hear an appeal from a decision of the High Court of Justice upon a case stated by justices as to an information for contravening the bye-laws of a school constituted under the Elementary Education Act, 1874: for the information relates to a criminal matter, within the meaning of the Supreme Court of Judicature Act, 1873, s. 47. *Mellor v. Denham*, 5 Q. B. D. 467; 49 L. J., M. C. 89; 42 L. T. 493; 44 J. P. 472—C. A.

An order was made by justices directing the defendant to fill up an ashpit, so as to be no longer a nuisance. The Queen's Bench Division made absolute an order for a certiorari to quash this order, on the ground that it was not warranted by the Public Health Act, 1875, ss. 94, 96:—Held, that the order of the justices was made in a "criminal cause or matter" within the meaning of the Supreme Court of Judicature Act, 1873, s. 47, and that an appeal from the judgment of the Queen's Bench Division could not be entertained. *Mellor v. Denham* (5 Q. B. D. 467) followed. *Reg. v. Whitechurch, or Whitechurch, Ex parte* (No. 2), 7 Q. B. D. 534; 50 L. J., M. C. 99; 45 L. T. 379; 29 W. R. 922; 45 J. P. 617; 46 J. P. 134—C. A.

The decision of a divisional court discharging a rule for a mandamus to election commissioners to grant a certificate, which certificate, if given, would be protection to a witness against criminal proceedings for bribery, does not relate to a criminal cause or matter, within the meaning of the Supreme Court of Judicature Act, 1873, s. 47, and the Court of Appeal is not therefore deprived of jurisdiction to hear an appeal against such decision. *Reg. v. Holl*, 7 Q. B. D. 575; 50 L. J., Q. B. 763—C. A.

— **Refusal of Divisional Court to issue Habeas Corpus.**—Whether the Court of Appeal has any jurisdiction to entertain an appeal from the refusal of a divisional court to issue a writ of habeas corpus, on the application of a person who has been arrested for an alleged extradition crime, *quære*. *Reg. v. Weil*, 9 Q. B. D. 701; 53 L. J., M. C. 74; 31 W. R. 60—C. A.

3. COURT OF CROWN CASES RESERVED.

Constitution.—By 44 & 45 Vict. c. 68, s. 15, *the jurisdiction may be exercised by any five or more judges of the High Court; provided that the Lord Chief Justice of England shall always be one of such judges, unless by writing under his hand or by certificate in writing of his medical attendant it shall appear that he is prevented by illness or otherwise from being present, in which case the presence of the said Lord Chief Justice shall not be necessary.*

Who may Reserve Questions of Law.—The recorder of a borough has power to reserve questions of law for the consideration of the judges. *Reg. v. Masters*, 3 New Sess. Cas. 326; 2 C. & K. 930; T. & M. 1; 1 Den. C. C. 332; 12 Jur. 942.

The 11 & 12 Vict. c. 78, applies to points of law arising upon trials, under special commissions, and authorizes the court to reserve points of law arising at the trial. *Reg. v. Bernard*, 1 F. & F. 240.

Jurisdiction.—In what Cases.—The 11 & 12 Vict. c. 78, gives no jurisdiction to the Court for Crown Cases Reserved, to hear a case stated from a criminal court on the sufficiency of an indictment, after judgment on demurrer to the indictment. *Reg. v. Fuderman*, 4 New Sess. Cas. 161; T. & M. 286; 3 C. & K. 353; 19 L. J., M. C. 147; 14 Jur. 377.

The court has only jurisdiction, after a conviction, over what takes place during the trial. *Id.*

A question raised in the court below, in arrest of judgment, is a question arising on the trial, and properly reserved. *Reg. v. Morton*, 3 New Sess. Cas. 575; 1 Den. C. C. 398; T. & M. 78; 18 L. J., M. C. 137; 13 Jur. 368.

The court is bound to examine the validity of an indictment, though no question is reserved upon it. *Reg. v. Webb*, T. & M. 23; 1 Den. C. C. 338; 2 C. & K. 933; 18 L. J., M. C. 39; 13 Jur. 42.

The court will only consider questions of law which shall have arisen on the trial of a prisoner. *Reg. v. Clark*, 1 L. R., C. C. 54; 36 L. J., M. C. 16; 12 Jur., N. S. 946; 15 L. T. 190; 15 W. R. 48.

Where a man was indicted for a misdemeanor and pleaded guilty, the court declined to consider whether he ought to have been indicted for felony on the same facts. *Id.*

On a charge of murder on the high seas, on board a British ship afloat, the deceased having been thrown out of a foreign ship in a foreign port, the question whether all the facts must not be averred in each count of the indictment, in order to give a judge sitting under an ordinary commission of oyer and terminer and general gaol delivery jurisdiction to try the offence as it arose on the record, is a point not to be reserved. *Reg. v. Menhom*, 1 F. & F. 369.

What a jury says in recommending a prisoner to mercy ought not to be made the subject of a case reserved. *Reg. v. Treblecock*, Dears. & B. C. C. 453; 27 L. J., M. C. 103; 4 Jur., N. S. 123.

On a trial for murder, the name of A., a juror on the panel, was called; B., another juror on the same panel, appeared by mistake, answered to the name of A., and was sworn as a juror. The prisoner was convicted. The circumstance that B. had answered for A. was not discovered till the next day, when the judge, being informed of it, reserved the question as to the effect of the mistake on the trial:—Held, that the conviction ought not to be set aside on the ground that there had been a mis-trial, and that the court had no jurisdiction over the case. *Reg. v. Mellor*, Dears. & B. C. C. 468; 7 Cox, C. C. 454; 27 L. J., M. C. 121; 4 Jur., N. S. 214.

The court cannot entertain questions of mere practice. *Reg. v. Stubbs*, 1 Jur., N. S. 1115.

Bail on.—Where a case has been reserved upon a conviction for an assault with intent to commit a felony, the court will not deem itself bound to admit the prisoner to bail until the decision of the point reserved, even although the offence is only a misdemeanor, and the prisoner was admitted to bail of right previously to the trial. *Reg. v. Bird*, 5 Cox, C. C. 11.

Where, after conviction by a jury at the assizes, questions of law have been reserved for the Court of Criminal Appeal, the prisoner will not be admitted to bail without the assent of the judge before whom he was tried. *Reg. v. Harris*, 4 Cox, C. C. 21.

Indictment Regarded, though not Set out.]—The court, for the purpose of assisting its judgment, will look at the indictment, although not set out in the case. *Reg. v. Williams*, T. & M. 382; 2 Den. C. C. 61; 20 L. J., M. C. 106.

Form of Case.]—The court expects cases reserved to be submitted in a complete form, and will ordinarily refuse to send back a case for amendment. *Reg. v. Holloway*, 1 Den. C. C. 370; 3 New Sess. Cas. 410; T. & M. 40; 18 L. J., M. C. 60; 13 Jur. 36.

Cases are not to be lengthy narratives of the facts. *Reg. v. Stear*, 18 L. J., M. C. 30; 13 Jur. 41.

Counsel dissatisfied with Form of Case.]—If a counsel should think that any material point raised at the trial has been omitted in the statement of the case, it would be proper for him to communicate with the judge who reserved the case, and suggest any amendment that in his judgment may be necessary. *Reg. v. Smith*, T. & M. 214; 4 Cox, C. C. 42; 1 Den. C. C. 570; 14 Jur. 92.

Points Raised must be Stated in the Case.]—The court will not consider an objection which has not been reserved, even though it is fairly deducible from the case itself. *Id.*

The court will not go into any matter of evidence which occurred at the trial, if it is not stated in the case. *Id.*

Signing Case.]—Where the assizes are held before two judges, and the one of them who tries a criminal case, after reserving a point for the consideration of the Court of Criminal Appeal, dies before the case is stated, the other judge may state and sign the case. *Reg. v. Featherstone*, Dears. C. C. 369; 23 L. J., M. C. 127; 18 Jur. 538.

Amendment—How Obtained.]—Where a case reserved does not, in the opinion of the counsel who were in it, fairly raise all the points that were in issue, the proper course is to apply to the judge reserving to amend it. *Reg. v. Smith*, 4 Cox, C. C. 42; 1 Den. C. C. 570; T. & M. 214; 14 Jur. 92.

Sending back Case.]—The court will not send a case back for amendment on the mere application of counsel; but will do so if on the argument it appears that it is imperfectly stated. *Reg. v. Hilton*, Bell, C. C. 20.

But the court will not send back a case to be restated upon an objection which is beside the merits. *Reg. v. Brummitt*, 8 Cox, C. C. 413; L. & C. 9; 3 L. T. 679. See also *Reg. v. Holloway*, *supra*.

Restatement of Case.]—Where a case reserved has been restated by order of the court, an application, supported by affidavit, to have it again restated, will be refused. *Reg. v. Studd*, 14 L. T. 633; 14 W. R. 806.

Arguments.]—The judges will hear the argument of points reserved, although they appear on the record, and were taken in arrest of judgment. *Reg. v. Martin*, 2 C. & K. 950; 3 Cox, C. C. 447; 1 Den. C. C. 398.

Where Court Differs.]—Where there is a difference of opinion amongst the judges upon a question of law, the case reserved will be argued before the fifteen judges; but where the court differs upon a question of fact only, judgment will be given according to the opinion of the majority that a conviction should be quashed. *Reg. v. Burrell*, L. & C. 354; 9 L. T. 426; 12 W. R. 149.

Who Commences.]—On the argument of a case reserved before the Court of Criminal Appeal, the counsel for the defendant must begin. *Reg. v. Gate Fulford*, Dears. & B. C. C. 74.

Appearance by Counsel.]—Counsel will be heard in support of a conviction on a case reserved, though no one appears on behalf of the prisoner. *Reg. v. Morton*, 1 Den. C. C. 398; 3 New Sess. Cas. 575; T. & M. 78; 18 L. J., M. C. 137; 13 Jur. 368.

A counsel who has appeared for a prisoner at the trial, but has not been instructed to appear for him in the Court of Appeal, may as amicus curiæ cite authorities for the information of the court, but will not be allowed to argue. *Reg. v. Thomas*, 33 L. J., M. C. 22; 9 L. T. 488; 12 W. R. 108.

Costs.]—The judge who tries a prisoner has power under 7 Geo. 4, c. 64, s. 22, to allow the costs of the prosecution on the hearing of a case reserved for the court for consideration of crown cases; and the officer of that court will tax and ascertain such costs, and certify the amount to the officer of the court below. *Reg. v. Lewis*, Dears. & B. C. C. 326; 7 Cox, C. C. 406; S. P., *Reg. v. Chudroy*, 3 C. & K. 205.

The court which has been directed to pass sentence on a prisoner, after a point reserved for the decision of the Court of Criminal Appeal, has power to allow the costs incurred in the latter court, and upon taxation, under an order to that effect, the briefs and fees of two counsel will be allowed. *Reg. v. Woolley*, 4 Cox, C. C. 452.

The court having no taxing officer, the costs of proceedings in that court must be taxed in the court below. *Reg. v. Dolan*, Dears. C. C. 486; 24 L. J., M. C. 59; 1 Jur., N. S. 72.

The court will not entertain a question of costs which is not within their jurisdiction, although it is expressly agreed by a case reserved that the court should have the same power, with respect to such costs, as the judge could legally have exercised at the trial. *Reg. v. Hornsca*, Dears. C. C. 291; 23 L. J., M. C. 59, 62, n.

XI. ESCAPE, RESCUE, AND PRISON-BREACH.

Escape—Aiding Prisoner.]—The offence of aiding a prisoner at war to escape is not complete, if such prisoner is acting in concert with those under whose charge he is, merely to detect the defendant, and has no intention to escape. *Rear v. Martin*, R. & R. C. C. 196.

An indictment at common law, for aiding a

prisoner's escape, should state that the party knew of his offence. *Reg. v. Young*, 1 Russ. C. & M. 291.

A delivery of instruments to a prisoner to facilitate his escape from gaol was within 16 Geo. 2, c. 31, although he had been pardoned of the offence of which he was convicted on condition of transportation. *Reg. v. Shaw*, R. & R. C. C. 526.

It is a misdemeanor, indictable at common law, to aid a person to escape from custody, though he was confined under the remand of the commissioners for the relief of insolvent debtors, and not on any criminal charge. *Reg. v. Allan*, Car. & M. 295; 5 Jur. 296.

By 4 Geo. 4, c. 64, s. 43, if any person shall deliver to a prisoner in any prison any instrument proper to facilitate his escape, such person shall be deemed to have delivered it with intent to aid and assist such prisoner to escape; and if any person shall by any means whatever aid and assist any prisoner to escape from any prison, every person so offending, whether an escape be actually made or not, shall be guilty of felony:—Held, that, in an indictment under this section, it was not necessary to set out the means which had been used by the defendant to assist the prisoner to escape. *Reg. v. Holloway*, 15 Jur. 825; *S. C.*, nom. *Holloway v. Reg. (in error)*, 2 Den. C. C. 287; 17 Q. B. 319.

The 28 & 29 Vict. c. 126, s. 37, enacts that any person who, with intent to facilitate the escape of any prisoner, conveys into any prison any mask, dress, or other disguise, or any letter, or any other article or thing, shall be guilty of felony:—Held, that a crowbar came within the words "any other article or thing" as used in this section. *Reg. v. Payne*, 1 L. R., C. C. 27; 35 L. J., M. C. 170; 12 Jur., N. S. 476; 14 L. T. 416; 14 W. R. 661.

Prison-Breach or Rescue.—A prison-breach, or rescue, is a common-law felony, if the person breaking out of prison, or rescued, is a convicted felon; and it is punishable as a common law felony by imprisonment. *Reg. v. Hawell*, R. & R. C. C. 458.

Throwing down, in attempting to escape, loose bricks at the top of a prison wall, placed there to impede escape and give alarm, is a prison-breach, though they are thrown down by accident. *Id.*

A man was given into custody, without a warrant, on a charge of felony. He was conveyed before a magistrate, who remanded him in custody without any evidence on oath. He was removed to a lock-up, from which he escaped. The charge of felony made against him was dismissed by the magistrates:—Held, that the dismissal was not equivalent to an acquittal by a jury, that he was legally in custody, although no evidence was taken upon oath to justify his remand, and that these facts were no defence to an indictment for breaking prison. *Reg. v. Waters*, 12 Cox, C. C. 390.

A warrant of a justice of the peace to apprehend a party, founded on a certificate of the clerk of the peace, that an indictment for a misdemeanor had been found against such party, is good, and therefore if upon such a warrant the party is arrested and afterwards rescued, those who are guilty of the rescue may be convicted of a misdemeanor. *Reg. v. Stokes*, 5 C. & P. 148.

The forcible rescue of a person from unlawful custody is illegal. *Reg. v. Almey*, 3 Jur., N. S. 750.

XII. PARDON.

Limited to Particular Case.—A. was, at the Spring Assizes of 1846, indicted for stealing a horse on the 26th day of February, 1841. He had, in 1842, been convicted of felony, and sent to the hulks, from which he was discharged in 1846. He produced a certificate of his discharge, which stated, that "J. H., who was convicted at Worcester, on the 22nd June, 1842, is this day discharged in consequence of having received a free pardon:—Held, that, if this pardon had been regularly proved, it would have been no bar to the charge of horse-stealing, as the pardon was expressly confined to another felony. *Reg. v. Harrod*, 2 C. & K. 294; 2 Cox, C. C. 242.

Effect of, on Attainder.—A convict sentenced to death for felony, which sentence was commuted to transportation for life, received a conditional free pardon in the penal colony:—Held, that such pardon did not alter the effect of the attainder in vesting his property in the crown. *Church, In re*, 16 Jur. 517.

The 5 Geo. 4, c. 84, s. 26, protects felons who have received a remission of their sentences in the enjoyment of all property acquired by them since their conviction, and not merely such property as has been acquired by their own industry. *Gough v. Davies*, 2 Kay & J. 623; 25 L. J., Ch. 677.

Terms substantially Complied with.—The king's sign manual may be given in evidence by a prisoner, on an indictment for returning from transportation; and if not revoked, and the condition is literally, though not substantially, complied with, it will discharge the prisoner from that indictment. *Reg. v. Miller*, 2 W. Bl. 797; 1 Leach, C. C. 74.

XIII. APPREHENSION AND ARREST OF OFFENDERS.

1. *Statutes.*
2. *By Constables and Private Individuals.*
3. *Warrant of Justices.* 832.
4. *Bench Warrants.* 833.
5. *Conveying Prisoner to Prison.* 834.

1. STATUTES.

Under the Larceny Act, 24 & 25 Vict. c. 96, s. 104; *for malicious injuries to property*, 24 & 25 Vict. c. 97, s. 57; *for offences against the coinage*, 24 & 25 Vict. c. 99, s. 31; *for offences against the person*, 24 & 25 Vict. c. 100, s. 66.

Arrest and Apprehension of Fugitive Offenders.—By 44 & 45 Vict. c. 69 (Fugitive Offenders Act, 1881), the 6 & 7 Vict. c. 34 is repealed, and the law on this point is amended.

2. BY CONSTABLES AND PRIVATE INDIVIDUALS.

See ante, MURDER (*Killing Officers of Justice*).

By Constables in Case of Misdemeanors and other Offences not Felonies.—A constable is not justified in taking a person into custody for a mere assault, unless he is present at the time. *Coupey v. Henley*, 2 Esp. 540.

If a constable sees an assault committed, he may recently after that assault, and before all danger of further violence has ceased, apprehend the offender; and if in so doing he is resisted and assaulted, the person assaulting is liable to be convicted of assaulting a constable in the execution of his duty. *Reg. v. Light*, 7 Cox, C. C. 389; *Dears*, C. C. 332; 27 L. J., M. C. 1.

If a person is guilty of an assault and battery, a policeman who is present and sees the offence committed, is justified in taking the offender at once into custody without warrant, in order to take him before a magistrate to answer for the offence; and if such a person is so taken into custody, he cannot maintain an action against a bystander for directing the policeman so to take him into custody. *Derrecourt v. Corbhisley*, 5 El. & Bl. 188; 24 L. J., Q. B. 313; 1 Jur., N. S. 870.

Using loud words in the street, though disorderly, is not an offence for which a party should be taken into custody. *Hardy v. Murphy*, 1 Esp. 294.

If a party is turning towards the wall in a street on a particular occasion, a watchman is not justified in collaring him to prevent him so doing. *Booth v. Hanley*, 2 C. & P. 288.

If a constable is preventing a breach of the peace, and any person stands in his way to hinder him from so doing, the constable is justified in taking such person into custody, but not in giving him a blow. *Levy v. Edwards*, 1 C. & P. 40.

Watchmen may imprison any person who encourages prisoners in their custody to resist. *White v. Edmunds*, Peake, 89.

A. went to a house at night, demanding to see the servant. He was told to depart, and would not. A constable was sent for, and A. went from the house to the garden. When the constable arrived, A. said that if a light appeared at the windows he would break them; upon which the constable took him into custody:—Held, that the constable was not justified in so doing. *Rev. v. Bright*, 4 C. & P. 387.

In an action by A. against B. for false imprisonment, B. justified on the ground of A. having wilfully and without excuse, within view of the constable who apprehended her, annoyed and disturbed the defendant and his family by knocking and ringing at his door:—Held, that to support this plea, under sections 54 and 63 of 2 & 3 Vict. c. 47 (Metropolitan Police Act), it was necessary to prove the offence to have been committed within view of the constable. *Simmons v. Millengen*, 2 C. B. 524; 15 L. J., C. P. 102; 10 Jur. 224.

A police constable of the city of London has no power under 2 & 3 Vict. c. xciv., to take a person into custody without a warrant, merely on suspicion that he has committed a misdemeanor. *Bowditch v. Balchin*, 5 Ex. 378.

In Case of Felony or Suspected Felony.—A peace-officer may justify an arrest on a reasonable charge of felony without a warrant, although it should afterwards appear that no felony had been committed; but a private individual cannot. *Samuel v. Payne*, 1 Dong. 359.

A constable is not justified in shooting at a man whom he had seen stealing wood growing in a copse (which, if a first offence, is only a misdemeanor), although the constable has no means of arresting the man without firing, and although

the stealing the wood in the particular instance amounted to felony, by reason of the man having been previously convicted several times for similar offences under 7 & 8 Geo. 4, c. 29, s. 39, these convictions being unknown to the constable at the time. *Reg. v. Dadson*, T. & M. 385; 2 Den. C. C. 35; 20 L. J., M. C. 57.

A constable having reasonable cause to suspect a person of felony may arrest him, though it appears no felony was committed. *Beckwith v. Philby*, 6 B. & C. 35; 9 D. & R. 487; *Hobbs v. Brandsecomb*, 3 Camp. 420.

A constable is justified in apprehending a person charged on suspicion of felony, if he has reasonable or probable cause to believe that the party charged is the felon. *Davis v. Russell*, 2 M. & P. 590; 5 Bing. 354.

If a reasonable charge of felony is made against a person who is given in charge to a constable, the constable is bound to take him, and he will be justified in so doing, although the charge may turn out to be unfounded. *Cowles v. Dunbar*, 2 C. & P. 565; M. & M. 37.

Watchmen and beadles have authority at common law to arrest and detain in prison, for examination, persons walking the streets at night whom there is reasonable ground to suspect of felony, although there is no proof of a felony having been committed. *Laurence v. Hedger*, 3 Taunt. 14.

A woman died after a very short illness; rumours were generally in circulation in the neighbourhood where she had lived that her husband had poisoned her, and a great crowd was collected in front of his house; upon which the constable of the parish, without any warrant, took him into custody, and conveyed him before a magistrate, who detained him till medical men had reported the cause of death, and then discharged him:—Held, that, if the jury was of opinion that the constable had reasonable ground of suspicion to justify the apprehension, an action could not be maintained for the arrest. *Nicholson v. Hardwick*, 5 C. & P. 495.

Who may be Arrested.—Where the crew of a Dutch ship had mastered the vessel and run away with her, and brought her into Deal, it was held that they might be seized and sent back to Holland. *Mure v. Kay*, 4 Taunt. 43.

Charge to Constable—Contents.—A charge to a constable, on taking a person into custody, that he has a forged note in his possession, without anything more, is defective, though the defect is immaterial, it not being necessary that the charge should contain the same accurate description of the offence as an indictment. *Re v. Ford*, R. & R. C. C. 329.

On whose Information.—A constable is not justified in apprehending a person as a receiver of stolen goods on the mere assertion of the principal felon. *Isaacs v. Brand*, 2 Stark. 167.

Duty of Constable on Arresting Person.—A constable arresting one on suspicion of felony, is bound to take him before a magistrate as soon as he reasonably can, and he cannot justify detaining him three days without going before a magistrate in order that evidence may be collected in support of the prosecution. *Wright v. Court*, 6 D. & R. 623; 4 B. & C. 596.

A constable having taken a prisoner on suspicion of felony, has no right to handcuff him, except he has attempted to escape, or except it is necessary in order to prevent his escaping. *Id.*

Private Individuals — In what Cases Arrest Justified.—By 14 & 15 Vict. c. 19, s. 11, after reciting that doubts have been entertained as to the authority to apprehend persons found committing indictable offences in the night, it is enacted, that it shall be lawful for any person whatsoever to apprehend any person who shall be found committing any indictable offence in the night, and to convey him or deliver him to some constable or other peace officer, in order to his being conveyed, as soon as conveniently may be, before a justice of the peace, to be dealt with according to law.

If a man is found attempting to commit a felony in the night, any one may apprehend and detain him until he can be carried before a magistrate. *Rea v. Hunt*, 1 M. C. C. 93.

A private individual cannot justify an arrest on a reasonable charge of felony, if it should afterwards appear that no felony had been committed. *Samuel v. Payne*, 1 Doug. 359.

When a private person apprehends another on suspicion of felony, he does it at his peril, and is liable to an action unless he can establish in proof that the party has actually been guilty of felony. *Adams v. Moore*, 2 Selw. N. P. 910; *S. P.*, *Allen v. Wright*, 8 C. & P. 522.

Suspicion that a party has on a former occasion committed a misdemeanor, is no justification for giving him in charge to a constable without a justice's warrant; and there is no distinction in this respect between one kind of misdemeanor and another, as breach of the peace and fraud. *For v. Gaunt*, 3 B. & Ad. 798.

A private person is not justified in arresting or giving in charge of a policeman, without a warrant, a party who has been engaged in an affray, unless the affray is still continuing, or there is reasonable ground for apprehending that he intends to renew it. *Price v. Seeley*, 10 C. & F. 28.

A wilful trespass on another person's property, without doing any real damage, is not sufficient to justify the apprehension of the parties under 1 Geo. 4, c. 56, s. 3 (since repealed, but re-enacted by 7 & 8 Geo. 4, c. 30). *Butler v. Turley*, 2 C. & P. 585; M. & M. 54.

A., a hawker, went to the house of B. to sell goods, and a dog of B. coming out of the house, A. knocked out one of his eyes, for which B.'s wife caused A. to be apprehended:—Held, that it was for the jury to say whether A. had struck the dog for his own preservation, and fairly to protect himself; or whether it was a wilful and malicious trespass on his part. To justify the apprehension of an offender under the Malicious Injuries Act, 7 & 8 Geo. 4, c. 30, the offender must be taken in the fact, or on a quick pursuit. *Hanway v. Boulton*, 4 C. & P. 350; 1 M. & Rob. 15.

By s. 103 of 24 & 25 Vict. c. 96, "any person found committing an offence under this act may be immediately apprehended without a warrant by any person:"—Held, that it is a question for the jury in all cases whether or not the apprehension was immediate, and whether the exigency of the statute was satisfied, having regard to the facts of the case. *Griffith* or

Griffiths v. Taylor, Thatcher v. Taylor, 2 C. P. D. 194; 46 L. J., C. P. 152; 36 L. J. 5; 25 W. R. 196.

Duty on Arrest.—A person justified, under the 7 & 8 Geo. 4, c. 30, in causing the arrest of another, must do it immediately, and he must send him by the direct road to the lock-up; for if he sent him extra viam, he would be a trespasser against the person so arrested. *Morris v. Wise*, 2 F. & F. 51.

3. WARRANT OF JUSTICES.

Form and Contents.—General warrants are illegal and void. *Money v. Leach*, 1 W. Bl. 555.

A warrant to arrest the party "to the end that he may become bound, &c., at the next sessions," means the next sessions after the arrest; therefore the officer may justify an arrest after the sessions next ensuing the date of the warrant. *Mayhew v. Parker*, 8 T. & R. 110; 2 Esp. 683.

A warrant issued by a magistrate for the apprehension of a party to answer a charge, should state the specific offence with which the party is charged, and that information thereof was duly made on oath before the magistrate. *Caulle v. Seymour*, 1 G. & D. 454; 1 Q. B. 889; 5 Jur. 1196.

A warrant directing police officers to apprehend a party, and in safe custody to keep, so as to have his body before her Majesty's justices of the peace at the next sessions, is ill, and such custody is illegal. *Nisbett, Ex parte*, 8 Jur. 107.

Arrest of British Subject Abroad.—A British subject arrested abroad under a warrant upon an indictment for a misdemeanor, brought in custody to England, and there committed to prison, is not entitled to be discharged. *Scott, Ex parte*, 4 M. & R. 361; 9 B. & C. 446.

Warrant in Possession of Constables at Time of Arrest.—A warrant was issued by a justice of a county, directed to the constable of the township, and generally to all her Majesty's officers of the peace in and for the county, commanding them, or some of them, forthwith to apprehend G. and convey him before two justices to answer for not obeying a bastardy order for payment of money. The warrant was delivered to the superintendent of police, and had subsequently been in the possession of D., one of the police constables. Afterwards D. and S., police constables, while on duty in uniform, arrested G. under the warrant, but they had it not in their possession at the time of the arrest, it being at the station-house. G. was rescued by several persons, who assaulted the constables, whereupon informations for the rescue and assault were laid against the parties by the constables, and at the hearing before justices the complaint as to the rescue was withdrawn, and that for the assault proceeded with, and the parties were convicted:—Held, that the conviction was bad, as the arrest by the constables was illegal, they not having the warrant in their possession at the time. *Galliard v. Laxton*, 2 B. & S. 363; 9 Cox, C. C. 127; 31 L. J., M. C. 123.

Held, also, that the withdrawal of the information as to the rescue was no bar to proceeding with the complaint as to the assault. *Id.*

When a warrant has been issued to apprehend a person for an offence less than felony, the

police officer who executes it must have the warrant in his possession at the time of arrest. *Codd v. Cabe*, 1 Ex. D. 352; 45 L. J., M. C. 101; 34 L. T. 453; 13 Cox, C. C. 202.

A man was summoned to answer an information charging him with trespass in pursuit of conies; as he did not appear in obedience to the summons, a warrant was issued for his apprehension. A police officer to whom the warrant was directed, but not having it in his possession, attempted to arrest the man, who thereupon committed an assault upon him:—Held, that he could not be convicted upon an information charging him with assaulting the police officer in the execution of his duty. *Id.*

Backing of Warrant.—C. was convicted of an assault on two police constables of the county police of Worcestershire in the execution of their duty, who were apprehending him in the city of Worcester under a warrant issued by two justices of and for the county of Worcestershire for his commitment to prison for default in payment of a fine, but not backed by any justice of and for the city of Worcester. Worcester is a borough having a separate commission of the peace with exclusive jurisdiction, and a separate police force. C. was not pursued from the county, but found in the city:—Held, that the conviction was wrong, as the constables were not acting in the execution of their duty in so executing such warrant. *Reg. v. Crompton*, 5 Q. B. D. 341; 49 L. J., M. C. 41; 42 L. T. 543; 28 W. R. 539; 44 J. P. 489.

Executing on a Sunday.—The exception, in 29 Car. 2, c. 7, s. 6, that process may be executed on the Lord's day, in cases of treason, felony, or breach of the peace, extends to all indictable offences, and is not restricted to treason and felony, and such misdemeanors as involve an actual breach of the peace. *Rawlins v. Ellis*, 16 M. & W. 172; 16 L. J., Ex. 5; 10 Jur. 1039.

4. BENCH WARRANTS.

When Granted.—Bench warrants should not be granted unless it is necessary that the party charged should be at once taken into custody. *Reg. v. Whittaker*, 2 F. & F. 1.

The court will not issue a bench warrant to bring up a witness, although it is sworn that he is keeping out of the way collusively, and that his evidence is so material to the prosecution that the case cannot go on without him, but will postpone the trial to allow the witness's recognizances to be estreated on his non-appearance when called. *Reg. v. Crawford*, 6 Cox, C. C. 481.

How Obtained.—A prosecutor of an indictment for misdemeanor may obtain the usual crown office certificate of his bill having been found, for the purpose of taking out a judge's warrant against the defendant, without obtaining an office copy of the indictment. *Re v. Redfern*, 2 A. & E. 387; 4 N. & M. 198.

Form of.—A warrant of a judge of the Queen's Bench issued, directed to the governor of a gaol, constables, &c., directing them to apprehend and take a party against whom a bill for a misdemeanor had been found at quarter sessions, and him safely keep, to the end that he may become bound and find sufficient sureties to answer the

indictment, and be further dealt with according to law, is a bad warrant, for not directing that the party should be brought before some judge or justice to be bound. *Reg. v. Downey*, 7 Q. B. 281; 15 L. J., M. C. 29; 9 Jur. 1073.

5. CONVEYING PRISONER TO PRISON.

Expenses of, by whom Paid.—A metropolitan police magistrate, having summarily convicted an offender and adjudged her to be imprisoned, made out a warrant for her commitment; in obedience to which warrant the plaintiff, a police constable, duly conveyed her to prison. By reason of such conveyance the plaintiff incurred certain expenses which the prisoner had no means to defray. The magistrate subsequently made an order under 27 Geo. 2, c. 3, directed to the defendant, ordering him to pay to the plaintiff the amount of such expenses. The defendant refused to comply with the order, on the ground that the liability to pay the expenses of conveying prisoners to prison had been transferred from the county to the Secretary of State by s. 4 of the Prisons Act, 1877, which provides, that "After the commencement of the act all expenses incurred in respect of the maintenance of prisons to which the act applies and of the prisoners therein shall be defrayed out of moneys provided by parliament." A similar question arose with regard to the expenses of conveying from the police court to the prison a man committed to take his trial for felony:—Held, that the expenses of conveying prisoners to prison were by s. 4 transferred to the Secretary of State, and that the word "therein" in that section pointed to the class of prisoners to whose maintenance the act was intended to apply, not to the period of time from which the liability for such maintenance was to commence. *Mullins v. Surrey (Treasurer)*, 7 App. Cas. 1; 51 L. J., Q. B. 145; 45 L. T. 625; 30 W. R. 157; 46 J. P. 276; 15 Cox, C. C. 9—H. L. (E.).

XIV. SEARCH WARRANTS.

On what Days Granted.—By 11 & 12 Vict. c. 42, s. 4, it shall be lawful for any justice or justices of the peace to grant or issue any search warrant on a Sunday as well as on any other day.

For what Offences.—By 24 & 25 Vict. c. 96 (Larceny Consolidation Act), s. 103, if any credible witness shall prove upon oath before a justice of the peace a reasonable cause to suspect that any person has in his possession, or on his premises, any property whatsoever, on or with respect to which any offence, punishable either upon indictment, or upon summary conviction by virtue of that act, shall have been committed, the justice may grant a warrant to search for such property as in the case of stolen goods.

For forged instruments, see 24 & 25 Vict. c. 98, s. 46; for counterfeit coin, and coining implements, 24 & 25 Vict. c. 99, s. 27; and for gunpowder and explosive substances, 24 & 25 Vict. c. 97, s. 55.

When Granted.—A positive oath that a felony is actually committed is not necessary to justify a magistrate in granting his warrant to search the premises and apprehend the person of a party suspected of felony. *Elsee v. Smith*, 1 D. & R. 97; 2 Chit. 304.

Other Goods taken away—Trespass.]—Where a constable, having a warrant to search for certain specific goods alleged to have been stolen, found and took away those goods, and certain others also supposed to have been stolen, but which were not mentioned in the warrant, and were not likely to be of use in substantiating the charge of stealing the goods mentioned in the warrant:—Held, that the constable was liable to an action of trespass. *Crozier v. Cundy*, 6 B. & C. 232; 9 D. & R. 224.

Right of Officers to Possession of Warrant.]—Excise officers went with a search warrant, and, at the desire of the party, gave it him to peruse, when he refused to return it:—Held, that they had a right to take it from him, and even to coerce his person to obtain the possession of it, provided they used no more violence than was necessary. *Rea v. Milton*, 3 C. & P. 31. *S. C.*, nom. *Rea v. Milton*, M. & M. 107.

How Executed.]—As to the proper mode of executing search warrants, see *Entick v. Carrington*, 19 St. Tr. 1067.

XV. ARTICLES OF THE PEACE.

1. Generally.
2. Justices, 838.

I. GENERALLY.

Where Exhibited.]—Articles of the peace ought to be exhibited in the neighbourhood, that the security may be given there. *Rea v. Waite*, 2 Burr. 780; 2 Ld. Ken. 511.

Controverting Facts Deposed to.]—Where a person exhibits articles of the peace, and swears that her life is in danger, the truth of the facts cannot be controverted. *Vane's (Lord) case*, 13 East, 172, n.

The facts stated in the articles are to be considered as true till the contrary appears upon a proper prosecution. *Id.*

Affidavits are not admissible for the purpose of supplying facts said to have been suppressed by the complainant, as the contents of a correspondence alluded to in the articles. Nor is it an objection to the articles that such correspondence is not set out, if it does not contain any part of the menace relied upon. *Reg. v. Mallinson*, 16 Q. B. 367; 15 Jur. 746.

On habeas corpus bringing up a party committed by justices for not finding sureties of the peace, the court will not hear affidavits controverting facts alleged in the articles of the peace. *Reg. v. Dunn*, 12 A. & E. 599; 4 P. & D. 415; 1 Arn. & H. 21; 5 Jnr. 721. *S. P.*, *Reg. v. Stanhope*, 12 A. & E. 620, u.

One against whom articles of the peace are exhibited, is not entitled to read affidavits on his behalf, in contradiction of the facts sworn to against him in such articles. *Rea v. Doherty*, 13 East, 171.

In what Sense Words used.]—A party gave information on oath before a magistrate, that, from certain language used towards him, he was in bodily fear from another, and the magistrate, upon hearing the complaint, required the latter to enter into recognizances to keep the peace.

On motion to discharge the recognizances, on the ground that the language was used in a metaphorical sense only, the court refused to interfere, because it was for the magistrates to judge in what sense the language was used. *Rea v. Tregarthen*, 5 B. & Ad. 678; 2 N. & M. 379.

What Sufficient Grounds.]—H. had written a letter to a young lady, a relative of T.; T. afterwards, in consequence of his writing the letters, violently assaulted H., and said, "If you write again, I will flog you within an inch of your life." On a subsequent occasion, T. meeting H., said to him, "Remember what I said to you; I am determined to put a stop to your proceedings." The court permitted H. to exhibit articles of the peace against T. *Hulse, Ex parte*, 21 L. J., M. C. 21.

It is sufficient ground for articles of the peace that the complainant has been accustomed to go to a particular place, rightfully, as he alleges, for the transaction of business, and has been threatened with violence if he goes there again. *Reg. v. Mallinson*, 16 Q. B. 367; 15 Jur. 746.

If it appears on oath to the satisfaction of the justices that the complainant has been threatened, it is their duty to require recognizances to be entered into to keep the peace. *Lort v. Hutton*, 45 L. J., M. C. 95; 34 L. T. 730.

There ought to be a reasonable foundation on the face of the articles, to induce a fear of personal danger, before the court will require sureties of the peace. *Vane's (Lord) case*, 13 East, 172, n.

Form of Recognizance.]—A recognizance, in the margin of which there was the name of the county of W., was stated to have been taken before "J. T., Esq., one of the justices for the county of W.:"—Held, that it sufficiently appeared, that the recognizance had been taken in the county for which J. T. was a justice. *Reg. v. Hodgson*, Dears. C. C. 14; 7 Ex. 915; 21 L. J., M. C. 181.

Requiring Bail.]—Upon articles of the peace exhibited, the court has power of requiring bail for such a length of time as they think necessary for the preservation of the peace, and are not confined to a twelvemonth. *Rea v. Bowes*, 1 T. R. 696.

Staying Process.]—Where articles of the peace appeared malicious and untrue, the court stayed process on them, and committed the exhibitant for perjury. *Rea v. Parnell*, 2 Burr. 806.

Jurisdiction of Court.]—The court cannot interfere to reduce the amount of security which the magistrates require a party to give for the preservation of the peace. *Rea v. Holloway*, 2 D. P. C. 525.

The court will, if it sees ground, require sureties of the peace, although justices have refused to do so on the same complaint. *Reg. v. Mallinson*, 16 Q. B. 367; 15 Jur. 746.

Power of Judge at Trial.]—In all cases of misdemeanor punishable by imprisonment, the Queen's Bench, and, therefore the judge at the trial, has power to adjudge that the defendant give security to keep the peace for a certain time, and that he be kept in prison until such security be given. *Dunn v. Reg. (in error)*, 12 Q. B. 1026; 18 L. J., M. C. 41; 13 Jur. 233—Ex. Ch.

No Period fixed for Entering into Recognizances.]—Quære, whether a judgment which directs that each of several defendants shall enter into recognizances to keep the peace for the space of seven years next ensuing the acknowledgment thereof, is good, as no period is fixed for entering into the recognizances. *O'Connell v. Reg.* (in error), 11 C. & F. 155; 9 Jur. 25.

Detaining Prisoner after Acquittal.]—If, after the grand jury is discharged, a prisoner charged with maliciously shooting is acquitted, the judge will not order him to be detained while articles of the peace against him are prepared. *Rea v. Holt*, 7 C. & P. 518.

Attachment.]—The court granted an attachment upon articles of the peace where the threat of further violence was conditional on the exhibitant writing again to a member of the defendant's family, although it did not appear that the exhibitant had written again, or was under any necessity of doing so. *Reg. v. Tollemache*, 2 L., M. & P. 401.

Certiorari—Applicant not in Custody.]—Where a peer had been arrested by a warrant of two justices, and bound by recognizances with two sureties to keep the peace, the court refused an application for a certiorari to bring up the recognizances (on the ground of the justices having no jurisdiction), as the applicant was not in custody; and, in the event of its being necessary to enforce the recognizances, their validity could be tried in another way. *Gifford (Lord), Ex parte*, 1 New Sess. Cas. 490.

Power to Examine Allegations in Articles.]—The court of Queen's Bench has authority to examine the allegations contained in articles of the peace when they are brought up by certiorari, and to quash the articles, if no sufficient offence is alleged to justify the justices in ordering the defendant to give sureties of the peace. *Reg. v. Dunn*, 12 A. & E. 599; 4 P. & D. 415; 1 Arn. & H. 21; 5 Jur. 721.

Application to Discharge.]—Where articles of the peace have been filed, and an attachment issued for the purpose of bringing in the defendant to find sureties, the court will not entertain an application to discharge the articles and to award costs under 21 Jac. 1, c. 8, s. 2, on the ground of alleged insufficiency of the articles, though notice of such application has been given to the prosecutor. *Reg. v. Mallinson*, 16 Q. B. 367; 15 Jur. 746.

A party, against whom articles of the peace have been exhibited in the court, cannot call upon the prosecutor to shew cause why the articles should not be discharged. *Ib.*

Articles Exhibited on Oath—Proof.]—Where articles of the peace were returned by certiorari, and affidavits made by others than the exhibitant were subjoined on the same parchment, and the whole ended with the following jurat—"sworn by the several deponents," &c.:—Held, that it sufficiently appeared that the articles had been exhibited on oath. *Reg. v. Dunn*, 12 A. & E. 599; 4 P. & D. 415; 1 Arn. & H. 21; 5 Jur. 721.

2. JUSTICES.

Jurisdiction, whence Derived.]—The power of justices to require sureties to keep the peace is derived from the commission of the peace, and it is confined to cases where a party makes it appear to the justices, that he goes in fear and in danger of personal violence from another, by reason of threats employed by him, or by reason of looks, gestures and conduct; but the party applying for protection must himself draw the inference that he is in fear of personal violence. *Reg. v. Dunn*, 1 Arn. & H. 21; 12 A. & E. 599; 5 Jur. 721.

Length of Time.]—A justice of the peace is not authorized to require a party to find sureties to keep the peace for an unlimited time. *Prichett v. Gratrez*, 2 New Sess. Cas. 429; 8 Q. B. 1021; 15 L. J., M. C. 145; 10 Jur. 566.

Commitment—Mention of Sum.]—It is not necessary that a commitment for want of sureties should mention the sum in which the party and his sureties are to be bound. *Ib.*

Refusing to enter into Recognizances.]—Articles of the peace were exhibited against A. at the quarter sessions of the county of H., and he was by that court ordered to enter into recognizances before one or more justices of H. to keep the peace for six calendar months thence ensuing. Under the warrant of two justices of H., A. was brought before two justices of the same county, to shew cause why he should not enter into the recognizance, and he then refused to do so, whereupon the justices last mentioned committed him to the county gaol for the then residue of six calendar months from the date of the order of quarter sessions, unless he should in the meantime enter into the recognizance—Held, that the justices had no power to commit, and that the prisoner was entitled to be discharged on habeas corpus. *Ashton or Aston, In re*, 1 New Sess. Cas. 581; 7 Q. B. 169; 14 L. J., M. C. 99; 9 Jur. 727.

A justice of the peace may commit to the house of correction, under 6 Geo. 1, c. 19, s. 2, for want of sureties to keep the peace. *Aston, In re*, 1 New Sess. Cas. 73; 12 M. & W. 456; 8 Jur. 293.

In a warrant of commitment for want of sureties to keep the peace, in consequence of having used language threatening bodily harm to an individual, it is not necessary that the warrant should shew the nature of the bodily harm threatened, or when the language was used. *Ib.*

A warrant of commitment, in substance stated, that whereas the plaintiff had been brought before the defendant (who was a justice), charged on the oath of T. P. with having written on the pavement in a lane the offensive words reflecting on the character of R. T. W., "Donkey Watt, the railway jackass;" and it having been stated to the defendant on the oath of T. P. that the continued writing for some time past of the offensive words was calculated to produce a breach of the peace, and T. P. prayed that the plaintiff might be required to find sureties to keep the peace, he, the defendant, ordered and adjudged that the plaintiff should enter into his own recognizances in 20*l.*, with two sufficient sureties in 15*l.* each, to keep the peace for three calendar months. The warrant stated that the plaintiff

had refused to enter into such recognizance and find such sureties, and commanded that the plaintiff should be conveyed to prison and there kept for the space of three months, unless the plaintiff in the meantime entered into such recognizance with such sureties. This warrant was afterwards quashed on motion, and an action of trespass brought against the defendant who granted it :—Held, first, that the warrant put in by the plaintiff was evidence of the information recited in it. *Haylocke v. Sparke*, 1 El. & Bl. 471; 22 L. J., M. C. 67; 17 Jur. 731.

Held, secondly, that it must be taken that the defendant intended to require sureties for good behaviour, notwithstanding the words "sureties of the peace" in the warrant. *Ib.*

— **In Case of Libels.**—Held, thirdly, that a justice of the peace has jurisdiction to require sureties for good behaviour in some cases of libels against private individuals, and that therefore the defendant had jurisdiction in the matter out of which the cause of action arose, and within 11 & 12 Vict. c. 44, s. 1, and consequently was not liable to an action of trespass. *Ib.*

XVI. BAIL.

1. *Application, when Granted.*
2. *Application, how Made*, 841.
3. *Other Points*, 842.

1. APPLICATION, WHEN GRANTED.

Principles on which Bail Accepted or Refused.]

—The court, in exercising its discretion of admitting a prisoner to bail, will consider the seriousness of the charge, the evidence in support of it, and the punishment which the law awards for the offence. *Barronet, In re*, 1 El. & Bl. 1; Dears. C. C. 51; 22 L. J., M. C. 25; 17 Jur. 184.

On an application to bail a prisoner charged with a criminal offence, the test to govern the discretion of the court is the probability of the prisoner's appearing to take his trial; but, in applying that test, the court will not look to the character or behaviour of the prisoner at any particular time, but will be guided by the nature of the crime charged, the severity of the punishment that may be imposed, and the probability of a conviction. *Robinson, In re*, 23 L. J., Q. B. 286.

The principle on which a party committed to take his trial for an offence may be bailed, is founded on the probability of his appearing to take his trial, and not on his supposed guilt or innocence; but the fact of a bill having been found against him is material in estimating that probability. *Reg. v. Seafie*, 9 D. P. C. 553; 5 Jur. 700.

It is a clear principle of law, that a person charged with a misdemeanor is entitled to be bailed on producing sufficient sureties. *Reg. v. Badger*, 4 Q. B. 468; D. & M. 375; 12 L. J., M. C. 66; 7 Jur. 216.

A magistrate has no right to reject bail, on account of the character or political opinions of bail, if he is satisfied of their pecuniary sufficiency. *Ib.*

Where the defendants, who were members of an extensive organization, were accused of a riot arising out of the agitation created by the said organization, bail was refused by the local magis-

trates :—Held (per May, C. J., and Fitzgerald, J., dissentient O'Brien, J.), that the defendants should not be admitted to bail, considering, first, the serious nature of the offence charged; secondly, the probability of the association, of which the defendants were members, furnishing them with funds to indemnify the bailsmen in case of default on the part of the defendants. *Reg. v. Butler*, 14 Cox, C. C. 530.

Certiorari Issued to bring up Conviction.]—

Where a certiorari had issued to bring up a conviction under 4 Geo. 4, c. 34, for the purpose of being quashed for defects on the face of it, the court admitted the defendant, who was in prison under the conviction, to bail. *Lord, Ex parte*, 4 D. & L. 405; 1 B. C. Rep. 222; 16 L. J., M. C. 15.

Confession of Guilt.—Upon an application to be admitted to bail by two Frenchmen, who had been committed on a coroner's inquest, and by a warrant of justices, for wilful murder in a duel, their affidavits stated that they had acted as seconds of the deceased, that the duel was fair, that they were ignorant of the law of England, and that the part which they took in the duel was not considered in France any legal offence :—Held, that there being a confession of guilt, the court was not justified in admitting them to bail. *Barronet, In re*, 1 E. & B. 1; Dears. C. C. 51; 22 L. J., M. C. 25; 17 Jur. 184.

Depositions containing Evidence of Murder.]—

A similar application was made on behalf of two other Frenchmen, under the same circumstances, upon the production of verified copies of the depositions before the coroner and before the magistrates; the prisoners made no affidavit. The court refused the application, on the ground that the depositions contained evidence to support the finding of the coroner's inquest. *Barthelemy, In re*, Dears. C. C. 60; 1 El. & Bl. 1; 22 L. J., M. C. 25; 17 Jur. 184.

The court refused to bail a prisoner, who was charged on a coroner's inquest with murder, and against whom a bill for the same crime had been found by the grand jury; although his trial had been postponed in consequence of the absence of witnesses for the prosecution; and it was alleged, that, on the face of the depositions, as taken before the coroner, the charge of murder could not be sustained. *Reg. v. Andrews*, 2 D. & L. 10; 1 New Sess. Cas. 199; 13 L. J., M. C. 113; 8 Jur. 779.

After True Bill Returned.—A judge will not admit a prisoner to bail after the grand jury has returned a true bill against him for murder. *Reg. v. Chapman*, 8 C. & P. 556.

In Case of Accomplice.—It is the duty of magistrates, in all cases, to commit an accomplice, and not to admit him to bail, notwithstanding it may be intended to call the accomplice as a witness on the trial. *Reg. v. Beardmore*, 7 C. & P. 497.

After Conviction.—A defendant, brought up for judgment after conviction, stands committed, unless the prosecutor consents to bail. *Reg. v. Waddington*, 1 East, 159.

Absence of Prosecutor.—It is in the discretion of the judge to bail the prisoner or not, when his

trial is postponed on account of the absence of the prosecutor. *Anon.*, 2 Lewin, C. C. 260.

When Procedendo Awarded.]—Where on error brought it was held that an entry by an inferior jurisdiction did not amount to a judgment, but was merely an order, the court awarded a procedendo to the court below commanding them to proceed to give the proper judgment, but in the meantime allowed the prisoner to be bailed. *Reg. v. Kenworthy*, 3 D. & R. 173; 1 B. & C. 711.

Acquittal not Entered.]—The bail of one acquitted of perjury will be discharged, although the acquittal is not entered of record. *Reg. v. Spencer*, 1 Wils. 315.

On Committal by House of Lords.]—When the House of Lords voted the defendant guilty of a breach of privilege, and committed him to prison, the court refused to discharge him out of custody. *Reg. v. Flower*, 8 T. R. 314.

Commitment in Execution—What is.]—A commitment by a justice of the peace for a time certain, as for fourteen days, under the vagrant act, is a commitment in execution, and the party is not entitled to be bailed. *Reg. v. Brooke*, 2 T. R. 190.

In Case of Libel.]—Semble, that a magistrate has the power of apprehending and of requiring bail of a libeller, and for want of it, of committing him. *Butt v. Conant*, Gow. 84. See *Haylae v. Sparke*, 1 El. & Bl. 471; 22 L. J., M. C. 67; 17 Jur. 731.

Fresh Bail—Bankruptcy of one.]—Where an indictment for conspiracy had been removed by certiorari, and the ordinary bail had been given, but after trial and the conviction of the defendant, and before judgment, a motion was made to quash the indictment for insufficiency, and pending such motion one of the bail became insolvent, and offered a composition to his creditors; the court refused to require the defendant to give fresh bail. *Reg. v. Johnson*, 1 D. & L. 132; 7 Jur. 1038.

On Case Reserved.]—See *ante*, ERROR AND APPEAL.

2. APPLICATION, HOW MADE.

Service of Rule Nisi.]—Where neither the husband of a feme covert, nor her next of kin, can be discovered, service of a rule nisi for bailing a prisoner on a charge of manslaughter, may be made on the coroner. *Reg. v. Williams*, 8 D. P. C. 301; 4 Jur. 654.

Notice of Bail.]—Where bills for misdemeanors are found under the commission of oyer and terminer at the Central Criminal Court, the defendant must give forty-eight hours' notice of bail, unless the application for process is made on a Friday, in any case in which there is reason to think that there is a desire to keep the party in custody over Sunday. *Reg. v. Carlile*, 6 C. & P. 628.

Right of Next of Kin of Deceased Person to be Heard.]—In a case of homicide the next of kin of the deceased have no legal right to be heard on an application for bail on a charge of

murder, but, *ex gratia*, the court may hear them. *Reg. v. McNaughten*, 14 Cox, C. C. 576.

Increasing Bail.]—After defendants have been admitted to bail on a criminal charge, the court will not, on affidavit of aggravating facts, increase the bail. *Reg. v. Salter*, 2 Chit. 109.

Number Required.]—Now it is an invariable rule to require four bail in cases of felony. *Reg. v. Shaw*, 6 D. & R. 154.

Fresh Bail—Motion for.]—A motion for fresh bail ought to be made at chambers and not in court. *Reg. v. Johnson*, 1 D. & L. 132; 7 Jur. 1038.

In the Country or in London.]—An attachment upon articles of the peace is bailable before justices of the county. *Reg. v. Bomaster*, 1 W. Bl. 233.

A party indicted for a misdemeanor at York, may put in bail in London. *Swaile's case*, 1 Lewin, C. C. 19.

Where the court thinks that a prisoner ought to be bailed for felony, if he is unable to defray the expense of being brought to Westminster for that purpose, they will grant a rule to shew cause why he should not be bailed by a magistrate in the country. *Reg. v. Jones*, 1 B. & A. 209.

The court will not allow a defendant who is out of custody, to be bailed before a magistrate in the country; he must surrender in court, in order to be bailed. *Reg. v. Wren*, 5 D. P. C. 222.

In order to entitle a defendant on a charge of felony to be bailed before a magistrate in the country, it is not necessary to produce an affidavit of poverty, if it appears from the other affidavits in the case that he is in a humble situation of life. *Reg. v. Brooker*, 2 D. P. C. 446.

The court will grant a rule nisi for bailing in the country a party charged with a felony, without the production of an affidavit of his poverty. *Reg. v. Gregory*, 9 D. P. C. 129.

In order to a party being bailed in London for an offence committed in the country, the depositions should be removed by certiorari, and notice served on the committing magistrates and on the prosecution. *Reg. v. Braithwaite*, 2 Lewin, C. C. 55.

3. OTHER POINTS.

Duty of Magistrate.]—It is the duty of a magistrate to ascertain the sufficiency of the bail who tender themselves on behalf of an accused party, but he ought not to interfere in any way to dissuade them from becoming bound as bail. *Reg. v. Saunders*, 2 Cox, C. C. 249.

— **Action against, for Refusing.]**—The power of a magistrate to accept or refuse bail in cases of misdemeanor is a judicial duty, and an action will not lie against him for refusing to take bail in such cases without proof of express malice, even though the sureties tendered are found by the jury to have been sufficient. *Linford v. Fitzroy*, 3 New Sess. Cas. 438; 13 Q. B. 240; 18 L. J., M. C. 108; 13 Jur. 303.

Recognizances — "Forthwith," Construction of.]—The word forthwith in a notice to a party charged criminally, and out on bail, to appear, on pain of forfeiting his recognizance, means, "within a reasonable time from the service,"

and not from the date of the notice. *Reg. v. Price*, 8 Moore, P. C. C. 203.

Indemnification of Bail.]—On the removal into the Queen's Bench of an indictment for a conspiracy against the defendant, the plaintiff became one of his bail in 40*l.*, the condition of the recognizance being, that the defendant should plead, and at his own costs cause the indictment to be tried, and appear personally, and not depart till discharged by the court. The defendant appeared, and was tried and convicted; and the costs of the prosecution not having been paid, pursuant to 5 Will. & M. c. 11, the recognizances were estreated, and the plaintiff was compelled to pay the 40*l.* The plaintiff having brought an action for money paid against the defendant to recover the 40*l.*:—Held, that as an express promise by a defendant in a misdemeanor to indemnify his bail against the consequences of not paying the cost of the prosecution would not be illegal, the law would imply a promise to that extent, and the plaintiff could therefore recover. *Jones v. Orelhard*, 16 C. B. 614; 24 L. J., C. P. 229; 1 Jur., N. S. 936.

— Whether Writing Necessary.]—Where B. promised verbally to indemnify A. against all liability if he would become bail for the appearance of C. to answer a charge of misdemeanor, and A., in consequence, became bail for C., the agreement need not be in writing, as the promise is a mere promise to indemnify, and not a promise to answer for the debt or default of another, since no debt or legal duty was owing from C. to A. in consequence of his having become bail. *Cripps v. Hartnoll*, 32 L. J., Q. B. 381; 10 Jur., N. S. 200; 8 L. T. 765; 11 W. R. 953—Ex. Ch.

— Validity of Contract.]—A contract to indemnify bail against the consequences of the non-appearance of an accused person is contrary to public policy, and therefore illegal. The defendant became bail in 100*l.* for the appearance of M. upon a charge of embezzlement. M. paid 100*l.* to the defendant to indemnify him for becoming bail, and then absconded:—Held, that the plaintiff, the trustee in bankruptcy of M., was entitled to recover that sum from the defendant; for although the contract to indemnify the defendant was against public policy, yet it remained executory, in the absence of any evidence to shew that the liability of the defendant, as bail, had been discharged. *Wilson v. Strugnell*, 7 Q. B. D. 548; 14 Cox, C. C. 624; 50 L. J., M. C. 145; 45 L. T. 218; 45 J. P. 831.

XVII. COSTS.

1. *Expenses of Prosecution.*
2. *Rewards for Extraordinary Exertions or Diligence*, 845.
3. *Costs in other Cases*, 846.
4. *After Removal by Certiorari*, 846.
5. *Taxation*, 853.
6. *Enforcing Payment*, 853.

1. EXPENSES OF PROSECUTION.

When Allowable.]—7 Geo. 4, c. 65, s. 22, and 14 & 15 Vict. c. 55, regulate the allowance of the costs of prosecution in felonies and misdemeanors.

The costs of prosecution are allowable and

enforceable under the *Larceny Consolidation Statute*, see 24 & 25 Vict. c. 96, s. 121; under the *Malicious Injuries to Property Act*, 24 & 25 Vict. c. 97, s. 77; under the *Forgery Consolidation Statute*, 24 & 25 Vict. c. 98, s. 54; under the *Coinage Consolidation Statute*, 24 & 25 Vict. c. 99, s. 42; and under the statute relating to *Offences against the Person*, 24 & 25 Vict. c. 100, s. 77.

On an application for costs under 14 & 15 Vict. c. 55, s. 3, in a case of assault the judge must be satisfied that the defendant was taken before magistrates for their summary decision of the case, and by them sent for trial at the assizes; but the production of the summons granted by one of the magistrates for the defendant to appear before such magistrates as should then be there, to answer the complaint, and be further dealt with according to law, is sufficient for this purpose. *Reg. v. Gavaron*, 3 C. & K. 320; 6 Cox, C. C. 64.

An indictment under 8 & 9 Vict. c. 109, which enacts that every person who by fraud or unlawful device or ill practice in playing cards, shall win from any other person any sum of money or valuable thing, "shall be deemed guilty of obtaining such money or valuable thing from such other person by a false pretence, with intent to cheat or defraud such person of the same, and being convicted thereof, shall be punished accordingly," is within 7 Geo. 4, c. 64, s. 23, which empowers the court to order the costs of prosecutions in indictments, for knowingly and designedly obtaining any property by false pretences. *Reg. v. Gardner*, 5 Cox, C. C. 140.

In frivolous cases of felony a judge will not allow the prosecutor's expenses, although he may be bound over to prosecute by a magistrate. *Reg. v. Powell*, 1 C. & P. 96.

A prosecutrix and witnesses were bound by recognizance to appear against a prisoner at the assizes on a charge of felony. By the advice of counsel, instead of an indictment for felony, an indictment was preferred for a misdemeanor at common law, on which no costs could be allowed. The judge made an order for the expenses of the attendance of the prosecutrix and witnesses. *Reg. v. Hanson*, 2 C. & K. 912.

A prosecutor and his witnesses were bound by recognizances to prosecute and give evidence at the assizes. They attended there and preferred an indictment, which was found. The prisoner had been by mistake discharged by proclamation at an adjourned sessions which preceded the assizes, and had absconded. The judge allowed the expenses. *Reg. v. Bobey*, 5 C. & P. 552.

A party who is bound over to prosecute at a superior court by a court of quarter sessions, is entitled to his expenses. *Reg. v. Paine*, 7 C. & P. 135.

Under 7 Geo. 4, c. 64, s. 22, the court may, in case of felony, allow the costs of the prosecutor and witnesses, though they are not under recognizances. *Reg. v. Butterwick*, 2 M. & Rob. 196.

Where an indictment on 7 & 8 Geo. 4, c. 30, s. 16, is removed by certiorari into the King's Bench, and is tried on a record issuing out of that court, the expenses of prosecution cannot be allowed under 7 Geo. 4, c. 64, s. 22. *Reg. v. Kelsey*, 1 D. P. C. 481.

Where the clerk of the peace, authorized to prosecute at the expense of the county, had not prosecuted, the expenses of prosecution were not allowed. *Reg. v. Cook*, 1 F. & F. 389.

The prosecutor, in a case of perjury, who has included his name in a subpoena, is entitled to his costs as prosecutor, though he is not bound over to prosecute by a magistrate, and he is not limited to his expenses incurred as a witness only. *Rea v. Sheering*, 7 C. & P. 440.

Justices of the peace at the quarter sessions have no authority, to order the costs of a prosecution for a misdemeanor, carried on under the direction of magistrates, to be allowed out of the county rates. *Rea v. W. R. Yorkshire*, 7 T. R. 377.

Where to an indictment at the assizes for a misdemeanor the defendants consented to plead guilty, upon an understanding that they were not to be brought up for judgment, and no stipulation or agreement having been then expressly made by the prosecutor for the payment of his costs:—Held, that he was not afterwards entitled to a rule on the crown side to have his costs taxed. *Rea v. Rawson*, 4 D. & R. 124; 2 B. & C. 598.

Mandamus to enforce Payment.—On a conviction of forgery, the trial taking place in the county of S., but the material acts appearing to have been done partly in the county of D., and partly in the borough of O., in the county of S., which borough had its own rate in the nature of a county rate, the judge of assize made an order upon the borough treasurer, under 7 Geo. 4, c. 64, s. 25, for payment of the prosecutor's costs. The order was not disputed during the assizes. The borough afterwards contesting it, and a mandamus being moved for:—Held, that the judge's order was conclusive, and that a mandamus might issue to enforce the payment. *Reg. v. Oswestry (Treasurer)* or *Reg. v. Hayward*, 12 Q. B. 239; 17 L. J., Q. B. 223; 12 Jur. 744.

What Sums included in Costs.—The court has no power to make an order on the treasurer for the interlocutory costs of a prosecution, and will not make any till the trial has actually taken place. *Young, In re*, 2 Cox, C. C. 280.

The court has no power to order payment, as part of the expenses of a prosecution, of the costs incurred by the warders of Millbank prison, in bringing down to Wells a prisoner in custody at Millbank, as an escaped convict, to be tried at Wells, on a charge of larceny from the person. *Reg. v. Waters*, 8 Cox, C. C. 350.

Under the words, "in otherwise carrying on such prosecution," in 7 Geo. 4, c. 64, s. 22, extra expenses which had been incurred in getting up a prosecution, ordered to be reimbursed. *Leven's case*, 2 Lewin, C. C. 161.

On Postponement of Trial.—Upon the postponement of a trial for the recovery of a witness who is ill, the prosecutor may then be allowed the costs of the prosecution incurred up to the date of the postponement. *Reg. v. Wilson*, 12 Cox, C. C. 622.

2. REWARDS FOR EXTRAORDINARY EXERTIONS OR DILIGENCE.

When Granted.—On an indictment for an attempt to murder by suffocating, the allowance of extra expenses for apprehending the prisoner is within the spirit and intention of the 7 Geo. 4, c. 64, s. 28, though not within the words. *Durkin's case*, 2 Lewin, C. C. 163.

Under the word "exertions," in 7 Geo. 4, c. 64, s. 28, a gratuity was awarded to a prosecutor for his courage in apprehending the prisoner. *Wormersley's case*, 2 Lewin, C. C. 162.

A person residing in a house broken into by burglars, and who, by fastening them in a room, detains them there until assistance is obtained, and the capture of the offenders effected, is within 7 Geo. 4, c. 64, s. 28. *Reg. v. Dunning*, 5 Cox, C. C. 142.

A judge has no power to order payment of the expenses incurred in the apprehension of a prisoner who has left England. *Reg. v. Barrett*, 6 Cox, C. C. 78.

Rewards, under 7 Geo. 4, c. 64, s. 28, are not confined to cases where the person apprehending has had a loss of time or has been at any expense. *Rea v. Barnes*, 7 C. & P. 166.

Affidavit Required.—An application under 7 Geo. 4, c. 64, s. 28, must be founded on an affidavit of the amount actually expended. *Reg. v. Haines*, 5 Cox, C. C. 114.

Where a reward is applied for under 7 Geo. 4, c. 64, s. 28, and the facts on which the application is grounded are not in evidence, the judge requires an affidavit of them. *Rea v. Jones*, 7 C. & P. 167.

3. COSTS IN OTHER CASES.

What Costs Prosecutor must Pay.—Costs for not going to trial shall be paid to a defendant, by the course of the court, on informations for misdemeanors, where the prosecutor does not countermand his notice of trial in time. *Rea v. Heydon*, 3 Burr. 1304.

But a prosecutor is not to pay costs for not going to trial according to his notice, if it is not occasioned by his own default. *Rea v. Righton*, 3 Burr. 1694.

Rule for Costs Absolute.—A rule for the costs of the day for not proceeding to trial on an indictment for perjury pursuant to notice, is absolute in the first instance. *Reg. v. Hazard*, 1 W., W. & H. 417; 2 Jur. 1067.

On Information.—On a defendant's acquittal on an information, he is not entitled under 4 & 5 Will. & M. c. 18, s. 2, to costs, beyond the extent of the recognizance entered into by the prosecutor in 20l. under that act. *Rea v. Filwood*, 2 T. R. 145.

The court on granting an information will not require the prosecutor to give security for costs, in case the defendant should be acquitted, beyond the extent of the recognizance in 20l. required by 4 & 5 Will. & M. c. 18, s. 2. *Rea v. Brooke*, 2 T. R. 190.

4. AFTER REMOVAL BY CERTIORARI.

Form of Recognizance.—An indictment was removed into the Queen's Bench by certiorari obtained at the instance of the prosecutor, who entered into a recognizance, with two sureties, conditioned that he should there prosecute with effect and perform all such orders and things as the court should direct. The defendants having been acquitted:—Held, that as the recognizance was not in the form prescribed by 16 & 17 Vict. c. 30, s. 5 i. e., conditioned to pay the defen-

dants' costs on acquittal, they were not entitled to costs. *Reg. v. East Stoke*, 6 B. & S. 536; 34 L. J., M. C. 190.

When Costs may be Awarded.]—The 38 Geo. 3, c. 52, s. 12, providing that no indictment shall be removed into the next adjoining county, except the persons applying for such removal shall enter into a recognizance in 40l. for the extra costs, does not relate to indictments sent by K. B. to be tried in the next adjoining county, after a removal thither by certiorari. *Rea v. Nottingham*, 4 East, 208; 1 Smith, 51.

Where the prosecutor of an indictment for a misdemeanor found at sessions removes it into the Queen's Bench by certiorari, he is not entitled to costs under 7 Geo. 4, c. 64, s. 23. *Rea v. Richards*, 2 M. & R. 405; 8 B. & C. 420; *S. P.*, *Rea v. Johnson*, 1 M. C. C. 173.

In the case of an indictment removed by certiorari, the court has no power to order the payment of costs incurred before the removal. *Rea v. Pasman*, 3 N. & M. 730; 1 A. & E. 643.

Where an indictment against a corporation, for non-repair of a highway, is removed by certiorari, at the instance of the prosecutor, the prosecutor is not required by 16 & 17 Vict. c. 30, s. 5, to enter into recognizances to pay the defendant's costs, in case of acquittal; indictments against corporations being excepted from the operation of the act. *Reg. v. Manchester (Mayor, &c.)*, 7 El. & Bl. 453; 26 L. J., M. C. 65; 3 Jur., N. S. 839.

A public body at its own expense preferred an indictment for a libel upon A., one of its officers, in the name of A. as prosecutor. The defendant removed the indictment by certiorari, and was convicted:—Held, that no costs could be awarded under 5 & 6 Will. & M. c. 11, s. 3. *Rea v. Dewhurst*, 2 N. & M. 253; 5 B. & Ad. 405.

The provisions of the 5 & 6 Will. & M. c. 11, ss. 2 and 3, attach only upon a defendant being convicted by judgment; and therefore if, after a verdict of guilty, the judgment is arrested, no costs can be taxed for the prosecutor. *Rea v. Turner*, 15 East, 570.

The prosecutor of an indictment removed by certiorari is only entitled under 5 & 6 Will. & M. c. 11, s. 3, to the costs of the counts on which the defendant is convicted. *Reg. v. Hawdon*, 3 P. & D. 44; 11 A. & E. 143.

Where a defendant who removes an indictment by certiorari is convicted, he shall not pay costs under 5 & 6 Will. & M. c. 11, to the prosecutors. *Rea v. Ingleton*, 1 Wils. 139.

Two defendants being indicted jointly in the Central Criminal Court for conspiracy, one of them applied to a judge for a certiorari, who granted it on his entering into a recognizance for the payment of the prosecutor's costs, in case either defendant should be convicted:—Held, that such terms were reasonable, and within the discretion of the judge; and that the 16 & 17 Vict. c. 30, s. 5, made no difference in this respect. *Reg. v. Jewell*, 7 El. & Bl. 140; 26 L. J., Q. B. 177; 3 Jur., N. S. 689.

By 16 & 17 Vict. c. 30, s. 5, after reciting that it is expedient to make further provision for preventing the vexatious removal of indictments into the Court of Queen's Bench, it is enacted, whenever any writ of certiorari to remove an indictment into the said court shall be awarded at the instance of a defendant or defendants, the recognizance now by law required to be

entered into before the allowance of such writ shall contain the further provision following, that is to say, that the defendant or defendants, in case he or they shall be convicted, shall pay to the prosecutor his costs, incurred subsequent to the removal of such indictment, &c.:—Held, that the prosecutor is entitled to his costs in the case of an indictment removed by certiorari under this section, though he is not "the party grieved or injured" to whom costs are limited by 5 & 6 Will. & M. c. 11, s. 3. *Reg. v. Oastler*, 9 L. R., Q. B. 132; 43 L. J., Q. B. 42; 29 L. T. 830; 22 W. R. 490; 12 Cox, C. C. 578.

Who are Parties Grieved.]—Rated inhabitants of a parish, who were prevented by rioters from entering the vestry-room to attend a meeting called for the purpose of imposing a church-rate, and who afterwards prosecuted the offenders, are parties grieved within 5 & 6 Will. & M. c. 11, s. 3; and therefore entitled to costs on conviction of the defendants after removal of the indictment by certiorari. *Rea v. Thompkins*, 2 B. & Ad. 287.

Persons dwelling near a steam-engine, which emitted volumes of smoke, affecting their breath, eyes, clothes, furniture, and dwelling-houses, and prosecuting an indictment for it, are parties grieved, and entitled to have their costs taxed under 5 & 6 Will. & M. c. 11, s. 3, upon removal of the indictment by certiorari from the sessions into the court by the defendants, and their subsequent conviction. *Rea v. Deuonap*, 16 East, 194.

A defendant was convicted of perjury on an indictment removed at his instance, by certiorari:—Held, that the prosecutors, who were executors of a deceased person, were entitled to costs under 5 & 6 Will. & M. c. 11, as persons grieved or injured, although the perjury occasioned them no actual damage, it being sufficient to bring the case within the statute that the perjury might have caused them damage, and the false oath of the defendant having put a difficulty in their way, which they were compelled to remove. *Reg. v. Major*, Dears. C. C. 13; 1 B. C. C. 68; 21 L. J., M. C. 21.

If the metropolitan police commissioners appointed under 10 Geo. 4, c. 44, s. 1, direct an indictment for assaulting one of the police constables in the execution of his duty, and the defendant removes such indictment by certiorari and is convicted, the commissioners are entitled to costs under 5 & 6 Will. & M. c. 11, s. 3, as justices of the peace and civil officers whom it concerned to prosecute. *Reg. v. Waldegrave (Earl)*, 2 Q. B. 341; 1 G. & D. 615; 6 Jur. 502.

Where an indictment has been removed by certiorari, and a conviction obtained, the person who, being a party grieved, retained and is liable to the attorney for the prosecution, is entitled, under 5 & 6 Will. & M. c. 11, s. 3, to the costs of such prosecution, though other aggrieved parties, after the attorney was retained and the indictment removed, agreed to contribute part of the costs, and they are not joined in the application. *Reg. v. Williams*, 6 Q. B. 273; 15 L. J., Q. B. 98; 8 Jur. 559.

An indictment for a libel on a political dinner, alleged to have a tendency to produce a riot, was, at the instance of the defendants, removed by certiorari:—Held, that a person injured at a riot which took place at that dinner was not a person

grieved within 5 & 6 Will. & M. c. 11, s. 3, and therefore, although the defendants were convicted on the indictment, he was not entitled to costs. *Reg. v. Caldecott*, 1 D., N. S. 556; 6 Jur. 344.

Where the defendants remove an indictment by certiorari, a merely nominal prosecutor is not entitled to costs under the 5 & 6 Will. & M. c. 11, s. 3, as a party grieved or injured. *Reg. v. Barnard Castle*, 1 Q. B. 246; 5 Jur. 799.

A child, six years old, was found wandering in a parish, within a union in London. It appeared to be destitute, and to have been assaulted and very ill-used. It was received into the union workhouse, and there maintained. On its being taken before two aldermen, they urged the guardians of the union to undertake the prosecution of the person who appeared to have ill-used the child. The guardians did so. The defendant removed the case by certiorari, and was convicted:—Held, that the guardians were entitled to the costs of the prosecution, under 5 & 6 Will. & M. c. 11, s. 3, having prosecuted as officers, on account of a fact that concerned them as officers to prosecute. *Reg. v. —*, 15 Q. B. 1060; 4 Cox, C. C. 345; 20 L. J., M. C. 53; 15 Jur. 55.

Where an indictment has been removed by certiorari, under 5 & 6 Will. & M. c. 11, s. 3, if the party grieved or injured is, in point of fact, the prosecutor, he will be entitled to costs, although not bound over to prosecute, and although another person, not a party grieved or injured, was bound over to prosecute, and was at the trial in pursuance of his recognizance. *Reg. v. Bishop*, 6 D. & L. 499; 18 L. J., M. C. 63; 13 Jur. 538.

A society of attorneys of a county had prosecuted an indictment against a defendant for practising as attorney at the quarter sessions of the city and borough, in the county, without being qualified. The defendant removed the indictment by certiorari, and was convicted:—Held, that the society was entitled to costs, under 5 & 6 Will. & M. c. 11, s. 3, as parties grieved. *Id.*

A defendant was committed by the lord mayor of London for trial for an indecent assault. An indictment found at the Central Criminal Court was removed into the Queen's Bench by certiorari at the instance of the defendant. The defendant was convicted. The prosecution was conducted by the city solicitor, in obedience to the directions of the lord mayor given at the time he committed the defendant; and the expenses were defrayed out of the city funds:—Held, that the case was not within 5 & 6 Will. & M. c. 11, s. 3, inasmuch as the lord mayor was not personally liable for the expenses, and could not be considered as a prosecutor. And a side-bar rule, taken out to tax the costs, was set aside. *Reg. v. Wilson*, 1 El. & Bl. 697; Dears. C. C. 79; 6 Cox, C. C. 176; 22 L. J., M. C. 53; 17 Jur. 460.

A side-bar rule for costs having been obtained by the prosecutors of an indictment for an obstruction to a highway as parties grieved, within 5 & 6 Will. & M. c. 11, s. 3, the court refused to discharge it on the ground that the expenses of the prosecution had been paid out of the funds of a society, of which some of the prosecutors were members, and that money had been raised by public subscription towards paying those expenses; or on the ground that all the

prosecutors were not parties aggrieved; or on the ground that the certiorari for removing the indictment had been obtained at the instance of one only of the defendants. *Reg. v. Dobson*, 9 Q. B. 302; 15 L. J., Q. B. 87; 10 Jur. 283.

When Sureties Liable for.]—The sureties of a defendant, on the removal of an indictment for a misdemeanor by certiorari from the quarter sessions, where the defendant has been convicted, are liable to pay the prosecutor's costs, although there is no such undertaking in the condition of the recognizance, or direct provision to that effect in 5 & 6 Will. & M. c. 11, s. 3. *Reg. v. Hodgson*, 7 Ex. 915; 21 L. J., M. C. 181.

Where a defendant removes an indictment by certiorari, and recognizances are entered into under 5 & 6 Will. & M. c. 11, s. 2; 8 & 9 Will. 3, c. 33, s. 1; and 5 & 6 Will. 4, c. 33, s. 2, conditioned only for the defendant's appearing, pleading, and trying at his expense, and the defendant is convicted, such recognizances will be estreated for non-payment of the costs of the prosecution, under 5 & 6 Will. & M. c. 11, s. 3, though the condition expressed in the recognizances is performed. *Reg. v. Hawdon*, 1 Q. B. 464; 1 G. & D. 135; 9 D. P. C. 1009; 5 Jur. 1008.

Where a defendant removes an indictment by certiorari, and enters into recognizances with two sureties, under 5 & 6 Will. & M. c. 11, ss. 2 & 3, and 8 & 9 Will. 3, c. 33, and is convicted, the sureties are liable to pay the prosecutor his costs. *Reg. v. Besant*, 7 D. P. C. 680; 2 W., W. & H. 113; 3 Jur. 579.

Bail only Liable if Defendant Convicted.—New Trial.]—A defendant had removed an indictment by certiorari, and had entered into the usual recognizances with two sureties. After a verdict of guilty at the assizes he obtained a rule for a new trial on payment of costs. Without paying the costs he gave notice of trial for the next assizes to the prosecutor, who obtained a judge's order, by which, if the costs were paid by a certain day, the notice of trial was to stand good, but otherwise to be set aside. The defendant did not pay the costs, did not try the indictment, and died within a few weeks. The prosecutor obtained a side-bar rule to tax his costs, to be paid by the defendant or his bail:—Held, that the bail were not liable to pay the prosecutor's costs, because they are only liable when the principal has been convicted; and that after the granting the rule for a new trial it could not be said that there had been a conviction within the true meaning of the recognizance, and that neither the defendant's default in paying the costs, nor the judge's order setting aside the notice of the trial, did away with the rule for the new trial, or restored the original verdict. *Reg. v. Bowen*, 7 D. & L. 312; 19 L. J., Q. B. 63.

— Death before Judgment.]—Where a defendant had removed an indictment from the sessions by certiorari, and was convicted, but died before he could be brought up for judgment:—Held, that his bail was liable to pay the taxed costs of the prosecution, under 5 & 6 Will. & M. c. 11, s. 3. *Reg. v. Turner*, 4 D. & R. 816; 3 B. & C. 160; *S. P.*, *Reg. v. Finmore*, 8 T. R. 509.

Who is Prosecutor,]—Where the order of a town council, being brought up by certiorari, is quashed, on motion, with costs, the court should

decide who is to be charged with costs as prosecutor of the order, and the party should be named in the rule. *Reg. v. Dunn*, 5 Q. B. 959; D. & M. 737; 13 L. J., Q. B. 237; 8 Jur. 773.

Indictment noticed without Affidavit.]—Where an indictment has been removed by certiorari, and judgment given upon it, the court will notice the contents of such indictment on a motion respecting costs of the prosecution, without having the record brought before them by affidavit. *Reg. v. Waldegrave (Earl)*, 2 Q. B. 341; 1 G. & D. 615; 6 Jur. 502.

Certiorari Granted—Application by one Defendant.]—Where an application was made to remove an indictment by certiorari by one of several defendants, the court granted it upon his entering into recognizances to pay the costs, not only if he was, but if either of the other defendants was, convicted. *Reg. v. Foulkes*, 1 L. M. & P. 720; 20 L. J., M. C. 196.

Where one of several defendants obtained a certiorari for the removal of an indictment into the Queen's Bench, and a procedendo was moved for on the ground that the certiorari improvidè emanavit, inasmuch as the other defendants had not joined in the application for the writ, and had not, under 5 & 6 Will. & M. c. 11, s. 3, entered into recognizances to pay the costs of the prosecution in case of their conviction:—Held, that the defendant, on whose application the certiorari was granted (being a person to whose responsibility there appeared no objection), might enter into recognizances to pay costs in case of the conviction of himself or of the other defendants, or of either of them, and that under these circumstances the procedendo would not be ordered. *Reg. v. Probert*, Dears. C. C. 30.

One of three defendants jointly indicted for misdemeanor at the Central Criminal Court, obtained a certiorari from a judge at chambers, to remove the indictment into the Queen's Bench, and entered into recognizances, conditioned to pay the costs of the prosecution if he was convicted, to appear, plead, and try. The other defendants concurred, but entered into recognizances only to appear, plead, and try. On motion for a procedendo, it was suggested that this course created hardship on the prosecutor, as, if the party removing were acquitted, but the other convicted, the prosecutor would have no security for costs:—Held, nevertheless, that the judge had a discretion, the exercise of which the court would not review, and the procedendo was refused. *Reg. v. Wilks*, 5 El. & Bl. 690; 25 L. J., Q. B. 47.

If an indictment against several defendants is removed by certiorari without the consent of one, he cannot be compelled to pay the costs of the trial, although he may have appeared and pleaded to the indictment and been tried on it. *Reg. v. Hassell*, 5 D. P. C. 531; 2 H. & W. 321.

Representatives of Prosecutor entitled to.]—Under 5 & 6 Will. & M. c. 11, s. 3, the representatives of the prosecutor are entitled to the costs taxed during his life, though no personal demand was ever made by him. *Reg. v. Chamberlayne*, 1 T. R. 103.

Deduction of Fine from.]—Where a defendant had removed an indictment, entered into a recog-

nizance, been convicted and fined, and the prosecutor received one-third thereof, so much was deducted out of the sum for costs. *Reg. v. Osborne*, 4 Burr. 2125.

Side-bar Rule—Mention of Bail.]—The defendant had removed an indictment by certiorari, and had entered into the usual recognizances with two sureties. The prosecutor obtained a side-bar rule to tax the costs of the first trial, to be paid by the defendant or his bail:—Held, that whether liable or not, the bail ought not to have been mentioned in the side-bar rule for the taxation of costs. *Reg. v. Bowen*, 7 D. & L. 312; 19 L. J., Q. B. 63.

Reasonable Costs—What are.]—Where an indictment was removed by certiorari at the instance of a defendant, and he was found guilty, the costs of conveying him to gaol, on his receiving sentence of imprisonment, are reasonable costs within 5 & 6 Will. & M. c. 11, s. 3, to be allowed to the prosecutor on taxation. *Reg. v. Gilbie*, 5 M. & S. 520; 2 Chit. 159.

What Costs Recoverable.]—An indictment removed by the defendant, and made a special jury cause by the prosecutor, came on to be tried, and was immediately referred. The order of reference stated, that if the arbitrator should be of opinion that the defendant was guilty, and the prosecutor entitled to costs, the defendant agreed to pay the costs. The arbitrator did so find:—Held, that the prosecutor could not recover the costs of the special jury, since the judge had not certified for those costs pursuant to 6 Geo. 4, c. 50, s. 34; and the order of reference did not expressly give a power of doing so to the arbitrator. *Reg. v. Moate*, 3 B. & Ad. 237.

When a prosecutor has removed the record by certiorari, if the trial is put off by reason of the act of God, the defendant is not liable to the costs of the day. *Reg. v. Barrett*, 2 Lewin, C. C. 263.

Upon an indictment for perjury, removed by certiorari, if the prosecutor gives notice of trial to the defendant, and withdraws his record, countermanding his notice in time, he shall pay costs to the defendant. *Reg. v. Bartrum*, 8 East, 269.

If a prosecutor, having removed an indictment by certiorari, gives notice of trial for the assizes, and brings down the record, and withdraws it after it has been entered for trial, the judge at the assizes cannot order the prosecutor to pay the defendant the costs of the day; but a motion must be made in the court of King's Bench. *Reg. v. Watton*, 4 C. & P. 229.

At what Time Payable.]—Where a judge at the assizes refused to try an indictment for a misdemeanor (perjury), manifestly bad on the face of it, but did not order it to be quashed, and the prosecutor preferred another indictment for the same offence, and removed it into K. B., the court would not call upon the prosecutor to pay the costs of the first prosecution, before he proceeded with the second. *Reg. v. Tremaine*, 5 D. & R. 413; 3 B. & C. 761; R. & M. 147.

Discharging Recognizance.]—Where on removing an indictment from the sessions, by certiorari, a recognizance is given by two in 20*l.* each, under 5 & 6 Will. & M. c. 11, ss. 2, 3, to secure the costs, such recognizance will not

be discharged till all the costs are paid, though they exceed 40*l*. *Ree v. Teal*, 13 East, 4.

5. TAXATION.

Jurisdiction of Queen's Bench to Review.]—The Court of Queen's Bench has no jurisdiction to review the taxation, by the clerk of assize, of the costs of an indictment for libel on the crown side at the assizes. *Reg. v. Newhouse*, 1 B. C. C. 129 ; 22 L. J., Q. B. 127.

Power of Treasury to Tax.]—The accounts of costs of prosecutions in the county of Lancaster, after having been duly taxed by the proper officers, and paid out of the county rates, were re-taxed by officers of the Treasury, and part of them was disallowed. The justices of the county obtained a rule for a mandamus to compel the Lords of the Treasury to pay the disallowed balance to their treasurer :—Held, that the Lords of the Treasury had no right to tax these costs after they had been allowed by the proper officers ; but that the Court of Queen's Bench had no jurisdiction to issue a mandamus to compel the Lords of the Treasury to pay the balance. *Reg. v. Lords of the Treasury*, 7 L. R., Q. B. 387 ; 41 L. J., Q. B. 178 ; 26 L. T. 64 ; 20 W. R. 336.

6. ENFORCING PAYMENT.

Attachment—Affidavit.]—Where a side-bar rule is issued under 5 & 6 Will. & M. c. 11, s. 3, and an attachment is moved for by the prosecutor for non-payment of the costs, it is not necessary to have an affidavit that the prosecutors are the parties grieved. *Reg. v. Hills*, 2 El. & Bl. 76 ; 22 L. J., Q. B. 322 ; 17 Jur. 714.

— Defendant a Bankrupt—Proof.]—Where costs of the prosecution of an indictment removed by certiorari have been proved as a debt under the defendant's bankruptcy, the court will not issue an attachment against him, or estreat his recognizance for non-payment, although they were not taxed in the regular course until after the bankruptcy ; but such proof is no discharge of the bail. *Reg. v. Hills*, 2 El. & Bl. 176 ; 6 Cox, C. C. 174 ; 1 C. L. R. 575 ; 22 L. J., Q. B. 322.

— Poverty of Defendant.]—On the removal by certiorari of an indictment for disobedience of an order of sessions, the defendant and two sureties entered into the usual recognizance under 5 & 6 Will. & M. c. 11, s. 2, which made no mention of costs. The defendant was convicted and attached for non-payment of the costs, and the recognizance was estreated into the Exchequer. On the petition of the defendant and his sureties, the court stayed the proceedings on the recognizance as regarded the defendant, on account of his poverty, but without prejudice to the liability of the sureties. *Reg. v. Thornton*, 4 Ex. 820 ; 19 L. J., M. C. 113.

— Against one Defendant.]—Several defendants were found guilty of a nuisance. The prosecutor being entitled to costs, as a party grieved, under 5 & 6 Will. & M. c. 11, s. 3, obtained a rule for taxing the costs as against all :—Held, that, upon non-payment of the costs, an attachment against one was regular. *Reg. v. Dobson*, 9 Q. B. 302 ; 15 L. J., Q. B. 376 ; 10 Jur. 905.

Mandamus to Borough Treasurer.]—See *Reg. v. Oswestry (Treasurer)*, *ante*, col. 845.

THE END.

